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Free Minds and Free Markets

Command Performances
The civilian-military conflict over the conduct of war

The Killer Fog
When green politics masquerades as science

Lust-See TV
Small-screen sex and its discontents

The Agony and the Ecstasy
How the OxyContin crackdown hurts patients in pain

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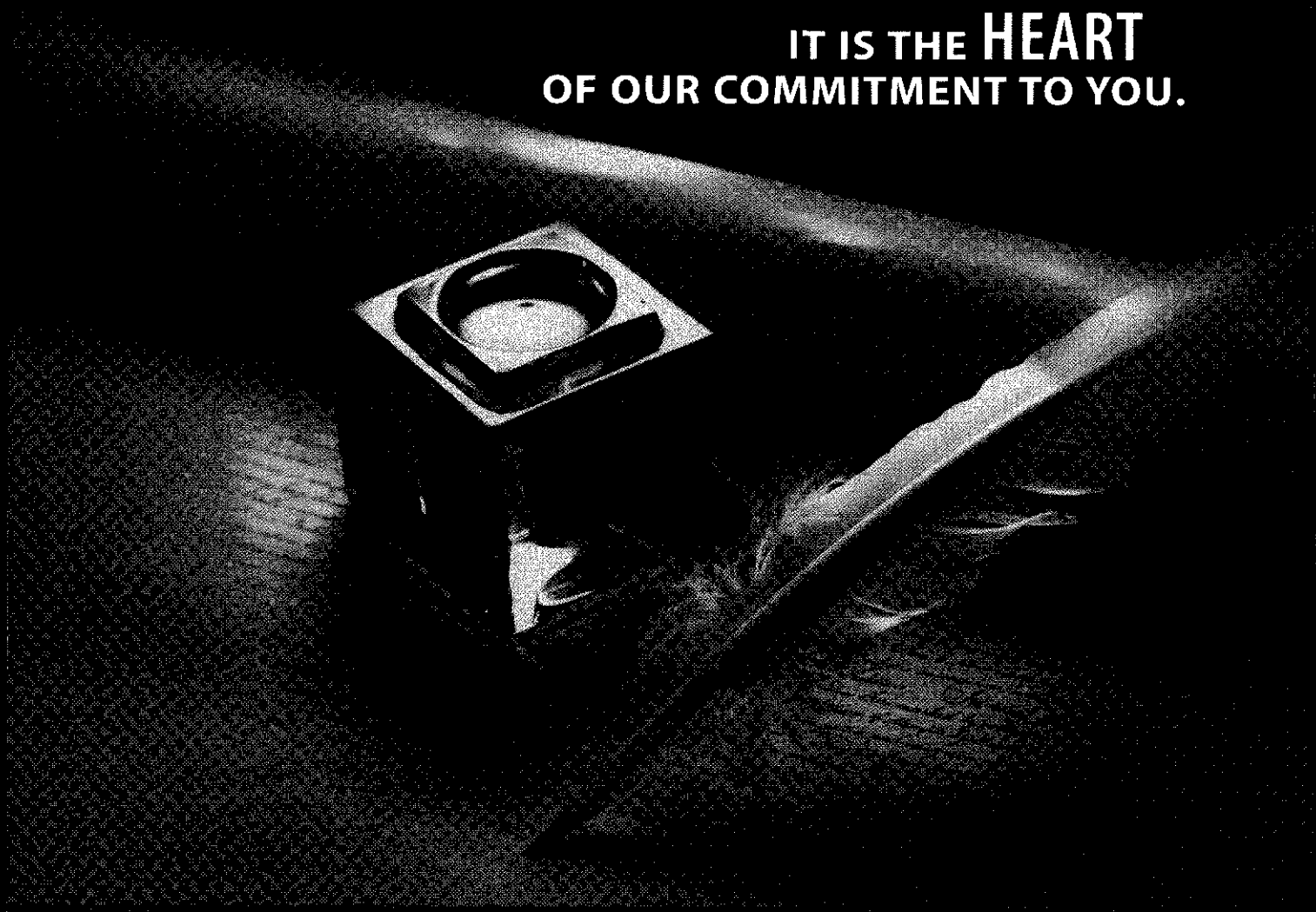

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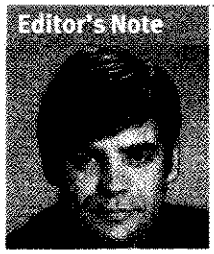

Moral Panic Buttons

As Americans, we're quick to congratulate ourselves for having created a thoughtful and enlightened society, one where superstition and inflamed passions are tempered by rational analysis and skeptical inquiry. This is largely true and cause for some measure of celebration, if not the uncritical smugness that often accompanies displays of national pride.

Yet a number of the stories in this month's **reason** point to instances where we have manifestly failed to exercise good judgment, where moral panic has replaced clear thinking. There's Damon W. Root's review of *Devil's Knot*, a new book about the "West Memphis Three," a group of boys unfairly convicted of gruesome "Satanic" murders in Arkansas ("Hell Hounds," page 60). Among the damning evidence: The defendants listened to heavy metal music and wore black clothing—proof strong enough to sway a jury, despite conflicting testimony and the absence of physical evidence.

In his analysis of A.L. Schafer's famous "Thou Shalt Not" photo, Senior Editor Charles Paul Freund underscores that for all our supposed sophistication, we remain convinced that "certain images are once again...*dangerous*—not merely offensive, but morally harmful if represented as normative" ("Wicked Woman Warning, page 64). It used to be pictures of scantily clad women that made censors shudder; now we tremble at images of smoking—so much so that some Hollywood directors have taken a pledge to eradicate cigarettes from their films. In a related way, my piece on "Lust-See TV" (page 57) rebukes those who insist, against the evidence, that small-screen sex leads to real-life rolls in the hay (would that life were so simple).

But it's our cover story about the controversial painkiller OxyContin that most fully drives home how moral panics can cause immense pain and suffering. Melinda Ammann's "The Agony and the Ecstasy" (page 28) documents in disturbing and depressing detail how hysterical tales of OxyContin abuse have made it increasingly difficult for doctors to treat pain patients properly. Ammann exposes the plight of doctors hounded by the Drug Enforcement Administration for allegedly promiscuous prescriptions and of patients who have to bear excruciating pain and increasingly uncertain access to the one legal drug that has made their lives bearable.

We tend to be optimistic here at **reason**, to have faith that people, given the widest possible latitude to live their lives and to conduct their business, will create powerful new ways to make the world a far better place. You can read about some very interesting developments along those lines in "Is That a Computer in Your Pants?" (page 36), Associate Editor Jesse Walker's fascinating interview with the great cyberculture visionary Howard Rheingold. But it's also vitally important to keep our attention focused on the cases where panic, fear, and reaction still carry the day.

Nick Gillespie

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A challenge to parents who would never dream of buying insurance online

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Todd Seavey

Michael Young

"I'm a little fashion-forward on technology," says **reason** Contributing Editor MIKE GODWIN, who reports on the regulatory debacle surrounding digital and high-definition TV ("Prisoners of Digital Television," page 44). "HDTV means less to me if I can't watch it on my laptop." Godwin, who just signed on as senior technology counsel to the digital rights advocacy group Public Knowledge, is best known for serving as co-counsel in *Reno v. ACLU*, the landmark case that struck down federal attempts to regulate Net content. He is also the author of *Cyber Rights: Defending Free Speech in the Digital Age* (1998).

Writer and self-styled "New Wave guy" TODD SEAVEY takes a critical look at a new book that argues pollution is a dire and immediate threat to the American population ("Killer Fog," page 52). Seavey, who edits HealthFactsandFears.com for the American Council on Science and Health, has worked as a writer for DC Comics and as an associate producer for John Stossel at ABC. He's also writing a book called *Conservatism for Punks*, dedicated to the proposition that "we ought to live in a world where it's OK to like Mozart, Johnny Rotten, tax cuts, guns, and lesbian performance artists all at the same time."

Contributing Editor MICHAEL YOUNG considers the influence of great statesmen on war in his review of Eliot A. Cohen's *Supreme Command* ("Command Performances," page 57). Young, who lives in Lebanon and writes two columns a week for Beirut's *Daily Star*, says he has two favorite "great men," neither of whom made Cohen's book: French President Charles de Gaulle and Italian actor Marcello Mastroianni. "Charles de Gaulle because by sheer force of will he turned a nothing hand into leadership of Free France," says Young. And Mastroianni? "Because he's the man we all want to be. He would represent grace under pressure—but pressure never had a chance."

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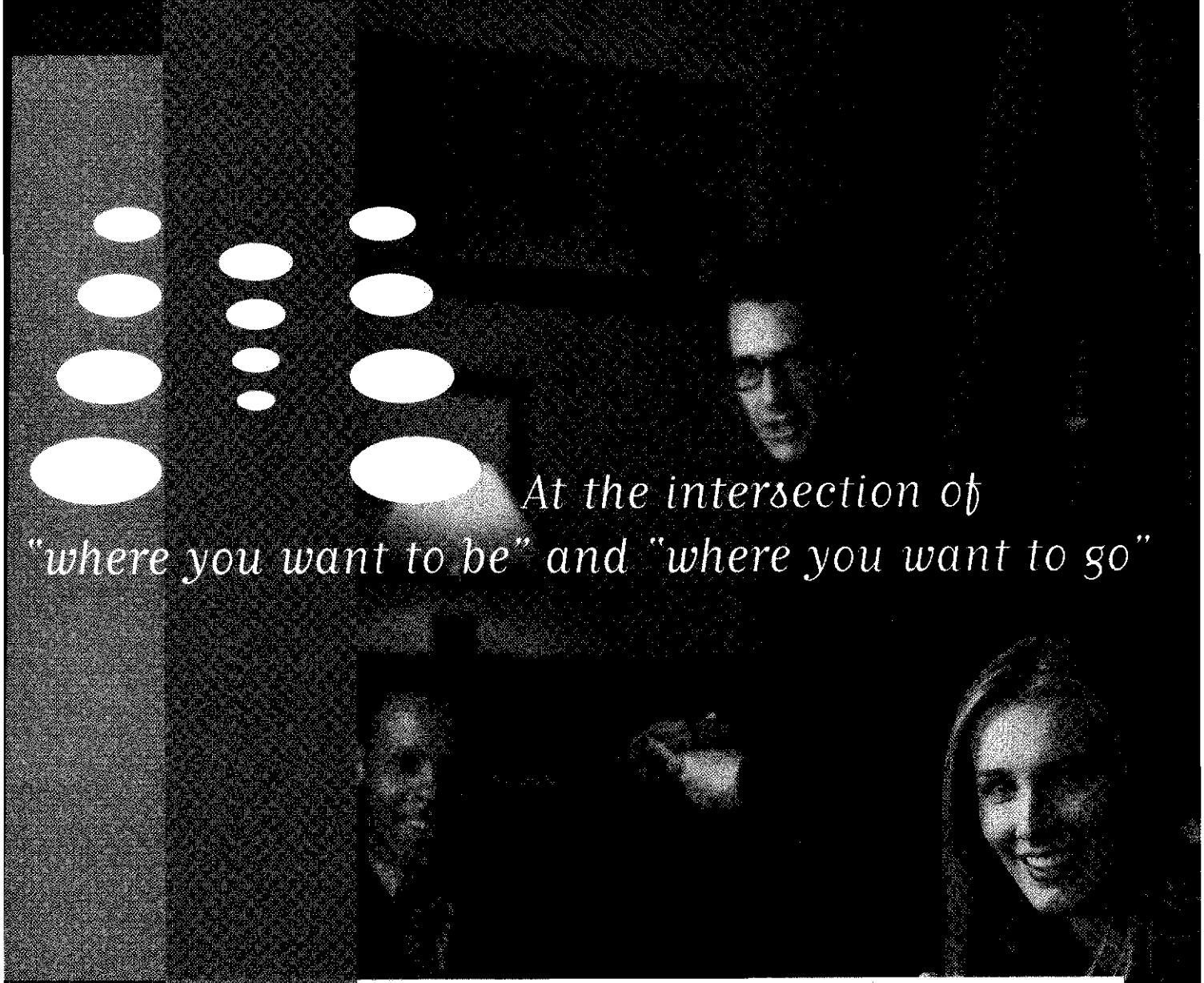

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Jury-Rigged

Kudos to Walter K. Olson ("Courting Stupidity," January) for taking on trial lawyers in general and the O.J. Simpson criminal trial jury in particular. I only hope his lonely courage doesn't hurt sales of his book.

His piece is very much in the **reason** tradition. During the Simpson trial, your main essayist on the subject was proud to have Geraldo Rivera do his thinking for him, taking the unpopular view that Simpson was guilty, six months before he could have heard a word of the defense case.

Olson makes much of supposed switching of portraits, black faces for white, before the jury's visit to Simpson's Rockingham home. This tale, which apparently comes from a post-trial book by a seasoned exploitation hack and a disgruntled Simpson attorney, is repeated on a prominent anti-O.J. Web site in its "gossip" section. After reading the transcript detailing the strict rules laid down by the judge regarding this visit (which was made over defense objections), I find it difficult to believe that even clever fiends like the "Dream Team" would take a wild chance like this, or that the prosecution wouldn't be screaming for sanctions if they had.

Olson also carries on about members of the defense team showing up in court in "garments of African kente cloth," described as an "unsubtle" attempt to sway jurors. Olson gave me the impression that an indifferent Judge Ito allowed them to swagger into court togged out like Eddie Murphy in *Coming to America*. I think this would have attracted press attention, but I can't find any. Would Olson be good enough to specify exactly what "garments" he is referring to?

To sum up, the "stupid" Simpson jury was unable to appreciate a "mountain of evidence" from the state but clever enough to get their racial marching orders from furtive glances at framed pictures and brightly colored bits of fabric. How did these symbols manage to resonate with the quarter of the panel that was not black, by the way?

But this is a small part of Olson's article, and I don't wish to downplay his larger point, that large corporations are having to pony up and aren't enjoying the experience at all. His solution seems to be to give more power to largely unelected and unaccountable judges, and his "reforms" suggest to me that he hasn't been in a jury box for quite some time. I have, as it is one of the hazards of being self-employed, and I have yet to encounter a "passive" judge, nor at any time did I feel in danger of "wielding government power" from any direction.

My experience was one of being herded into a stuffy courtroom to listen to pronouncements from a remote figure towering over the rest of us. I can only hope that Arizona's example regarding jury note taking is followed here in the Garden State. I can't wait to sit in a cramped box with 11 strangers, notepad balanced precariously on my knee, as I strain to hear the witnesses over the dodgy sound systems that are standard issue here. This would at a minimum encourage jury bonding, as we argue over whose notes are more accurate when the inevitable conflicts arise. That's why we engage professionals to keep a transcript, Blackstone.

Gwyn Thomas
North Plainfield, NJ

Even though Walter Olson covered much about the practice of voir dire, his calls for reform of the jury selection system, "including the abolition or curtailment of peremptory challenges and narrowing for-cause challenges," are a

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far cry from ending this corrupting practice.

Another idea that he bandied about was to allow the jurors to take notes and question the judge, but I doubt stupid people taking notes and asking stupid questions will solve the problem. It certainly does not address the problem of judges telling the jury how to deliberate and vote.

Olson also argues that judges are not exerting their power to rein in lawyers who exploit the system and make a mockery of proper court proceedings. He states that judges exercising more power in this regard "would be all to the good if it happened." I would argue that if it were in the judges' interests to rein in lawyers, they already would have.

When members of the legal establishment have decided to divide the stolen power of the jury among themselves, it is difficult to imagine that they would return that power willingly. This story is not just about "runaway juries"; it is a testament to the lengths that the legal and governmental system will go to strip power from the last guarantor of the people's rights, the jury trial.

Kevin Tull
Kansas City, MO

Walter K. Olson replies: On the defense's redecoration of the walls of the Simpson residence, see Jeff Rosen's article in the December 9, 1996, *New Republic*; on Cochran and colleagues' wearing kente cloth into court, see Christopher Caldwell's *Commentary* piece in the March 1997 issue. Gwyn Thomas offers no reason to doubt the accuracy of either account but instead professes to doubt that a target audience's ethnic or nationalist loyalties could be much played on by the sight of symbolically potent garments (mere "bits of fabric") or of artworks portraying little girls being brutalized by the other guy's race. If so, then the art of the propaganda poster will need to be rethought.

Most of Thomas' other swipes may well pass without comment. I will, however, express amazement at the notion that the only reason jurors would ever wish to take notes is to substitute for the functions of the written trial transcript they will have a chance to see later.

Steroids and Meatheads

Dayn Perry's "Pumped-Up Hysteria" (January) was a piece of sanity amid drug hysteria in barbell circles. I'm a former lifter who has taken steroids. I never saw a single case of steroid rage. In fact, I never even heard of one until the media wrote stories on it.

There are a number of arguments against steroid use, but they don't go far. Some say that it isn't fair to have an athlete assume a risk that is not intrinsic to doing the sport. Well, in the pole vault, today's fiberglass poles can break in midair, unlike the old stiff poles. You can land on your head. Is that intrinsic to the sport? Is Astroturf intrinsic to football? Sports are always changing and are defined by the current practice at the highest levels.

When I was competing, I would have preferred to have the snatch and clean and jerk and not the press as competitive lifts, and to have had a weight class around 230. But in those days the class went from 198 to the huge guys. I had to force-feed and go up to 252 to have a shot. I wasn't coerced. That was just the way it was. When I retired because of a back injury, they introduced a 220-pound class, and later a 242 class, and now they are back to 231 pounds. They dropped the press in the mid-'70s too. Oh well. My lumps.

Finally, I don't think the Olympic Committee can say much about health concerns until they ban smoking. Many foreign lifters smoke. There was some hilarious hide and seek at the Atlanta games in 1996. The Turkish lifters wanted to smoke in between lifts, but the American aides were under instructions that no one could smoke indoors. It is quite something to go into the men's room and find the whole Turkish team in there puffing away.

Doug Stalker
Newark, DE

It is refreshing to finally read an article by someone who understands the lack of a steroid problem. I am a nationally ranked power lifter who took steroids and lived in the steroid subculture from 1979 through 1985. I know what a steroid body looks like, and they aren't in major league baseball.

I'm bothered by nitwit sportswriters who never touched a weight reporting about steroids. I am convinced that when they hear that a ballplayer is taking a pro-hormone they report it as steroid use. Anyone who ever took steroids knows that no one got big taking pro-hormones. They are a total waste of money. Creatine and even basic protein powders work much better.

The other point reporters fail to discuss is that pro baseball players are part of God's gifted world of special athletes who will generally benefit more from weightlifting than the average person. A strong athlete could easily, over the course of, say, six years, lift weights and eat high-density protein supplements and gain an average of five pounds a year. Yet some dorky writer comes along and says, "Barry Bonds is 30 pounds heavier than he was eight years ago so he must be taking steroids."

Russell Clark
Highlands Ranch, CO

Finally, an author has done some extensive homework instead of shooting

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from the hip! We athletes are infuriated by the media hype about steroids, which is myth-based or just plain nonfactual. I have written many letters to congressmen and sports writers in vain, trying to protest the damaging lies written about athletes who use anabolic enhancing drugs.

It is obvious to any real athlete that the media in general have absolutely no knowledge on the subject of physique-enhancing drugs. Yet they create public uproar, leading equally uneducated politicians to declare war on the drugs and the athletes who use them. It was former President George Bush who signed the Anabolic Steroids Control Act of 1990, making steroids a Schedule III crime, equal to cocaine and amphetamines. Now Sen. Byron Dorgan (D-N.D.) and Rep. John Sweeney (D-N.Y.) have taken the torch and are yelling from their soapboxes.

Other methods of physical enhancement, such as liposuction and implants, are all legal yet far more dangerous. Hormones for birth control or gender change are legal. Cigarettes and alcohol kill millions. Meanwhile, the great threat to athletes from steroids is only the possibility of being caught and arrested, and the fiasco that will follow.
Mike Schlanger
Baltimore, MD

Thanks for an excellent overview on steroid hysteria. Back in 1986 and 1988, when I was counsel to the House Judiciary Committee, I had the steroid issue in my file. I thought then that the whole controversy was a concoction. Steroids did not belong in the Controlled Substances Act.

The sports world accepts all kinds of technological innovations—except certain classes of chemicals. If drug use is so terrible, then establish two leagues—one in which drug use is permitted and one in which it is not. It would be interesting to see how large the market would be for the drug-free league.
Eric E. Sterling
Silver Spring, MD

Coffee Bean Counters

If anything, Jackson Kuhl underestimates the virtues of Starbucks' competition in the marketplace ("Tempest in a Coffeepot," January). According to *The Wall Street Journal*, far from driving out other U.S. coffee shops, Starbucks has created a demand for upscale coffee, one that independent coffeehouses often fill. They thrive alongside Starbucks (literally, in the case of a coffeehouse near my college) by offering hangouts with character.

It's also ironic that Starbucks opponents complain about spreading its "monoculture" overseas: Starbucks is a bit of Americana, so why shouldn't Italians or Austrians be able to get a taste of it for a few euros? It's cheaper than traveling to the U.S., and they can still patronize their local favorites. The alternative is a European monoculture.
Jay Weiser
Associate Professor of Law
Zicklin School of Business
Baruch College
New York, NY

Free Will vs. Psychiatry

In his review of *Pharmacracy* ("Head Games," January), Jacob Sullum quotes Thomas Szasz: "Attributing mental illnesses...to biological alterations occurring at a 'subcellular level' is a parody of the denial of free will, choice, and responsibility."

Extensive research into the brain's neuroadaptation to drugs shows that at least part of the explanation of addiction lies at the subcellular level. Dependence, tolerance, and craving for nicotine, alcohol, and other drugs are a function of changes, brought about by substance use, in the number and responsiveness of neurotransmitter binding sites in various brain systems regulating behavior. More generally, *any* scientifically sound and complete explanation of addictive behavior or other disorders, whether at the subcellular, neural, or personal levels, must perforce involve the denial of free will, since free will (at least in the libertarian sense of an uncaused chooser) is precisely that which can't be explained by causal analysis.

In order to defend free will, Szasz and others wedded to the libertarian notion of freedom must hold that science can't fully explain human behavior: that we are in some deep sense causally privileged over the rest of nature. But there is no evidence for such causal exceptionalism, only the traditional supposition that for people to be held responsible, they must be ultimately self-caused in some respect. This supposition too is increasingly being called into question, as it becomes clear that moral and criminal responsibility can be reconceived as necessary guides to behavior for rational but nevertheless fully determined agents. In other words, holding people responsible helps to create good choices.

A complete scientific explanation of addiction and other disorders, therefore, need not be forsworn in favor of choice and responsibility, since these turn out to be entirely compatible with causality. Admitting we are not exceptions to nature can only further the humanitarian mission of learning how and why we behave as we do, whether in sickness or in health.
Thomas W. Clark
Boston, MA

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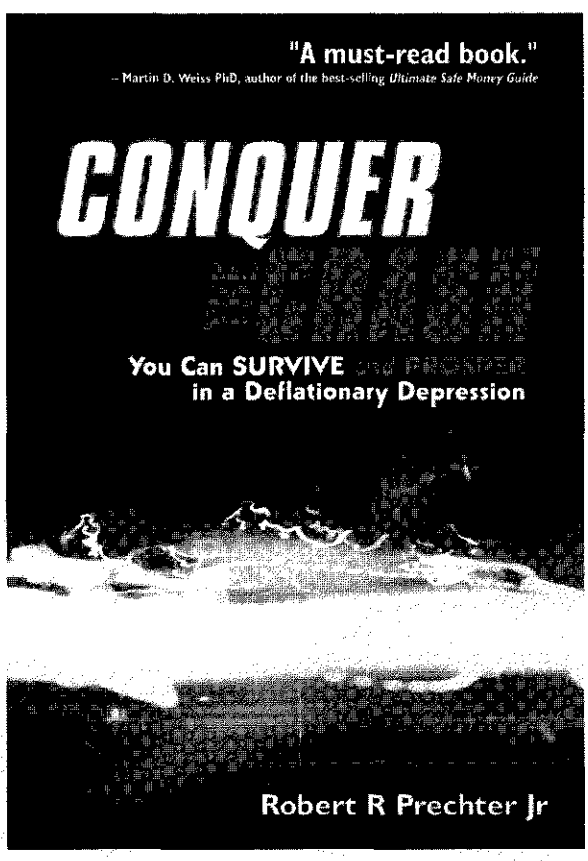
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Comic book conviction; (class) size doesn't matter; Samuel Pepys' 17th-century weblog; who's an environmentalist?; high-tech bicycling; Canadian privacy watch; and a zoning rebellion in Georgia.

Opera goes underground

Revolutionary Arts

Sara Rimensnyder

TIJUANA, THE MEXICAN border town south of San Diego, isn't exactly known as an incubator for culture, other than the kind of culture gringos explore after downing *mucho* tequila. Yet in the last year Tijuana has made headlines in U.S. papers not as a place to get drunk cheap and buy (and use) Viagra but as the home of a fledgling underground opera scene.

Organized opera in Tijuana began literally underground, in the basement of enthusiast Enrique Fuentes' Internet café, Café de la Opera. It has grown into La Opera de Tijuana, a company formed by café regulars Jose Medina and Maria Teresa Rique. Under Medina's artistic direction, the company will this year stage 10 chamber performances and its third full-length production, *I Pagliacci*, this August, reports the *Los Angeles Times*.

Such a high-culture watermark was once limited to Mexico City, where residents are extremely proud of their government-funded cultural institutions and have long considered Tijuana a vulgar backwater. But change has come gradually to the border town, in part thanks to an industrial boom and an influx of wealthy newcomers after the 1985 earthquakes in the capital.

But Tijuana opera remains different from that of Mexico City. For one thing, its underground origins have taken the traditional art out of its elite context and introduced it to less wealthy Mexicans. As significant, it has shunned government funding. So far the only public assistance the Tijuana Opera has accepted is free use of the city's performing arts center.

Such independence is almost revolutionary for Mexico, where artistic exploits, even rock bands, are routinely government-funded. Many involved in the Tijuana opera scene have attributed its dynamic growth to its independence.

Manuel Laborin, the city's first opera radio DJ, is one of those people.

"It's like a child. If you give him everything, you turn him into a bum," Laborin told the *Los Angeles Times*. "If you give him the basics, he learns to do it for himself. That's what happened to us. The people of Tijuana, more than anyone else, have created this." Many credit Laborin's radio show, which first aired in 1993, with developing the multi-class audiences that today mean packed houses for Opera de Tijuana productions.

Internet-opera café owner Fuentes echoes Laborin's sensibility. "Often, people depend on government institutions," he told reporter Sam Quinones. "I didn't want any of that. That's why I began in a small room in my house and said, 'Let's see where this goes.'" ▮

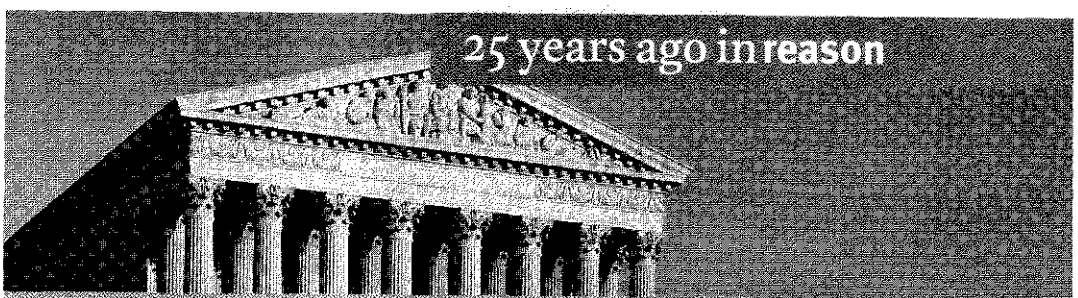
Benefits of drinking

Good for the Heart

Jacob Sullum

SINCE THE EVIDENCE that drinking can help prevent heart disease began to emerge in the 1970s, health nannies have worried that publicizing the connection would encourage alcohol abuse. But the latest study to confirm the health benefits of drinking suggests there is little cause for worry on that score.

The study, reported in the January 9 *New England Journal of Medicine*, indicates that the



"I expect to read any day now that the cannon blasts should be deleted from the 1812 Overture because prolonged exposure to such blasts has been linked with damaged tympanic membranes and anti-social behavior among laboratory animals. Moreover...if all orchestra parts were transposed to a single piano score, the cost-effectiveness of the piece could be greatly increased with the savings passed on to the music consumer."

—Peter Fasolino, "F.A.N.S. (Further Adventures of Nader's Sophists)"

"Persons who rely on the Supreme Court test that something is obscene only if it has no redeeming value are 'depraved, mentally deficient, mind-warped queers,' the Utah Supreme Court said in upholding a Salt Lake City obscenity ordinance."

—Bill Birmingham, Brickbats

"Nobody...is giving a completely satisfactory factual answer to the question [of whether the Soviet Union is a threat]—although I'm not satisfied that there's *no* threat emanating from the Soviet Union....I think that what we're going to have to get down to is a hypothetical question—if there *is* a threat, what to do about it?"

—Earl C. Ravenal, Interview

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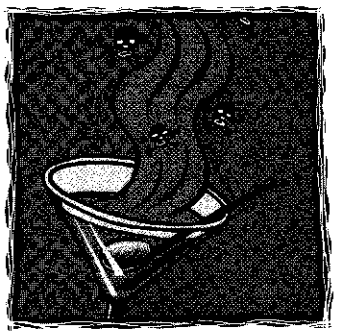
key to alcohol's cardiovascular benefits is drinking frequently, rather than drinking a lot. The researchers, who followed 38,000 men for 12 years, found that subjects who drank three or more days a week were one-third less likely to have a heart attack than those who drank less than once a week. The risk reduction for men who drank once or twice a week was 16 percent.

It did not matter what kind of alcohol the men drank, or



whether it was consumed with meals. Surprisingly, the amount consumed on each occasion did not make much difference either. Once the glass is half empty, it seems, you're more or less drinking in the spirit of Psalm 104, which calls "wine that cheers the hearts of men" a divine blessing.

Speaking of which, an article published around the same time in *The Journal of the American Medical Association* reported that "the total number of binge-drinking episodes among U.S. adults increased from approximately 1.2 billion to 1.5 billion" between 1993 and 2001. It was hard to know how alarmed to be about this finding, however, since it was based on a survey that defined *binge* as "consumption of 5 or more alcoholic beverages on 1 occasion."

Clearly, one man's dinner party is another man's binge—especially if the other man has a degree in public health.

Comic book conviction

Obscene Prosecution

Brian Doherty

IT IS EASY to forget, but you can still be convicted for selling a periodical to an adult in this country. A Dallas comic book retailer, Jesus A. Castillo, was found guilty in August 2000 of distributing obscene material after selling a copy of *Demon Beast Invasion: The Fallen #2* to an undercover cop. Last July the Court of Appeals of Texas rejected his appeal. Now he hangs onto the unlikely hope that the U.S. Supreme Court will hear his case.

At the trial, a six-person state jury decided that *Demon Beast Invasion* was obscene and thus illegal—meaning that it has offensive sexual content under contemporary community standards and lacks serious literary, artistic, political, or scientific value. Castillo received a $4,000 fine, 80 hours of community service, a 180-day suspended sentence, and eight months' probation.

Two expert witnesses—comic artist and theorist Scott McCloud and Susan Napier, an Asian studies professor at the University of Texas—testified at the trial to the artistic context of the comic, which was adapted from an enormously popular Japanese comic.

The dissenting member of the three-judge appeals panel that ruled in July thought the trial did not adequately establish that Castillo was aware of the specific content of *Demon Beast Invasion*, which he hadn't read prior to the sale. Merely having placed it in an adult-only section was not sufficient proof that he knew the comic was obscene, the judge said.

A private eye hired by the defense found various porn magazines of equivalent sexual content for sale in the area, raising the possibility that the comic might not really violate community standards. Castillo and his lawyers have suggested that the prosecution prejudiced the jury by stressing the supposedly youthful nature of the typical comic audience and the store's proximity to an elementary school, though children were not at issue in the case.

In late 2002 the Comic Book Legal Defense Fund, which fights for comic sellers' and creators' legal rights, filed an appeal in the U.S. Supreme Court. Fund director Charles Brownstein told the Web-based comics news site newsarama.com, "There's no other remedy at this point, at the state levels. If there's any chance the Supreme Court will hear it, we're obligated to do so."

More teachers, same scores

Does Size Matter?

Jacob Sullum

UNVEILING A PROPOSAL to help public schools hire more teachers several years ago, Bill Clinton said "every parent already knows" that education improves when class size shrinks. As skeptical as they may have been about many other things that Clinton said, most Americans probably agreed, and reducing student-teacher ratios remains a favorite goal of education reformers.

But as researchers such as University of Rochester economist Eric Hanushek have been pointing out for years, there is little reason to believe that hiring more teachers leads to better academic performance. A new study covering 84 percent of the country's public high schools provides further grounds for skepticism.

Analyzing data for 12,916 schools, the Columbus-based educational research service SchoolMatch found no significant association between the number of students per teacher and SAT or ACT scores. "There simply appears to be no positive relationship between small »

Quotes

"Now that [baby boomers are] in charge of the university, the rules have changed. As students, they were members of free-speech movements; now that they've earned tenure, they have become advocates of speech codes. Radicals when they were on the bottom, they've become censors when they're on top."

—Daphne Patai in the January 31 *Chronicle of Higher Education*

"The plus is that I'm known by everybody. The minus is that I'm known by everybody."

—trash talk show host Jerry Springer, commenting on a possible 2004 Senate run in Ohio, on CNN.com, January 23

Source

Who says dead men don't tell tales? The diaries of Samuel Pepys—one of the most famous primary sources for students of 17th-century England—are being posted to pepysdiary.com in weblog format, one entry per day.

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Brickbats

It's good to lie to your kids, according to John Walters, director of the White House Office of National Drug Control Policy. The New Orleans *Times-Picayune* reported that Walters told Louisiana parents they should lie to their children about their own past drug use in order to discourage them from such activities. "They're your kids, not your confessors," he said.

The county executive of Anne Arundel, Maryland, strongly supports tough anti-smoking efforts. Since taking office in 1998, Janet S. Owens has backed a number of such measures, including a state tobacco tax hike and a "Smoking Stinks" campaign for teenagers. But Owens is also a smoker. Several county employees say she even lights up in her office, in violation of state and local laws. Owens has refused to comment.

The Baltimore City Council has made it illegal to sell a BB gun to anyone under 18. Juvenile homicides were up 50 percent in 2002 from the previous year. None of those people was killed with a BB gun, but city officials say criminals are using BB guns that look like real firearms to rob people.

DARE instructor Michael Thiel got high marks from his police department and from the schools where he lectured kids on the perils of illegal drugs. But then he and two other members of the Harris Township, Pennsylvania, police force were arrested for alleged cocaine use. The case began when one of those other officers was busted outside a pizzeria, off duty but in his patrol car, allegedly trying to buy cocaine.

Villagers from South Africa's Bokna Farm drove two old men and their families from their homes after three houses were set ablaze by lightning. The area is prone to lightning strikes because of its climate and high altitude, but the villagers were convinced the men were witches who had called down the lightning. While the lightning destroyed three homes, the marauding villagers burned down five.

A Pakistani court sentenced Ahsan Azamtullah, 45, to life in prison and fined him $1,700. His crime? Blasphemy. He was a disciple of the late Sardet Ahmed, whom the government has declared a false prophet.

Speaking of Pakistan, cricket star Wasim Akram has been sued for 25,000 rupees by one of his fans, Fiaz Ahmed. Ahmed says he is "saddened and disappointed" by Wasim's alleged appearance in an Indian advertisement for liquor. "Pakistan is an Islamic country and for Wasim, being a celebrity, promoting liquor is against Islamic laws and has caused all Muslims mental torture," Ahmed said.

Finally, police in Pakistan's North-West Frontier Province raided 23 cinemas and dozens of video stores, charging them with showing or selling obscene films. The charges surprised the proprietors, since the national censorship board had cleared all the movies. But the province is now ruled by a coalition of Islamist parties that have begun enforcing a version of *sharia* much stricter than that used in the rest of the country. The province also has banned music and ordered buses to stop mid route at prayer times.

Charles Oliver

classes and student success on college entrance examinations," said Steven M. Sundre, SchoolMatch's executive vice president.

In a time of tight state budgets, this contradiction of conventional wisdom should be welcome news. "Roughly 90 percent of the operating funds of public schools are spent on staff commitments," noted SchoolMatch President William L. Bainbridge. "Nothing has a greater impact upon a school system's budget than low pupil/teacher ratios."

Who's an environmentalist?

It's Not Easy Being Green

Jesse Walker

IS THERE A legal definition of *environmentalist*? It sounds like a question for law students in their cups, but it actually entered a federal courtroom earlier this year. Having successfully sued the government to put a "properly qualified environmental representative" on one of its advisory panels, a collection of eco-groups went on to complain that the appointee was insufficiently green.

In December the Bush administration appointed Brian Mannix to the Industry Sector Advisory Committee on Chemicals & Allied Products. Mannix, a researcher at the pro-market Mercatus Center, says he sought the job "to represent the public interest, with a special expertise in environmental matters." Earthjustice, a nonprofit law firm specializing in green issues, complained that Mannix "has often opposed regulatory approaches to environmental problems" and, therefore, does not qualify as an environmentalist. Mannix begs to differ, though he confesses that he has "trouble disaggregating the public's 'environmental interest' from all of its other interests."

In January, Judge Barbara Rothstein sided with Earthjustice and its clients, declaring that "none of the salient aspects of Mr. Mannix's background suggest that he would represent the environmental community's viewpoint," which apparently is well-defined enough to be described in the singular. She added that Mannix has not ever "been affiliated with any environmental group or ever advocated on behalf of protecting the environment. The court is, therefore, unpersuaded that Mr. Mannix's appointment provides a voice for the environmental community."

Mannix can still serve on the committee, but not as the environmental representative. Meanwhile, the panel itself isn't allowed to meet until the green rep is in place. "When I applied for this appointment," Mannix comments, "I fully expected that my qualifications, both technical and political, would receive thorough scrutiny. What is surprising to me is that my political qualifications should be vetted by a federal judge."

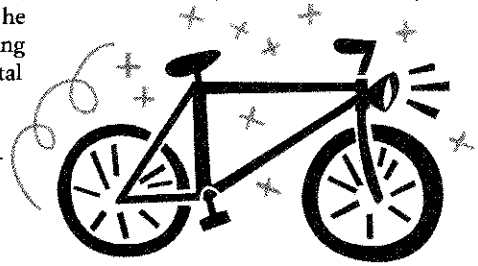
Grassroots globalization

High-Tech Bicycling

Sara Rimensnyder

CAN THE INTERNET improve the lives of rural villagers in Laos, where most still don't have access to telephone lines or electricity?

The San Francisco–based Jhai Foundation, dedicated to improving the social and economic lives of Lao through a variety of programs, believes it can. So do the villagers, who told the foundation they needed timely, accurate information about pricing in the market town of Phon Hong and the capital, Vientiane, in order to sell their surplus crops. Weavers also needed communication tools to coordinate, via voice and e-mail,



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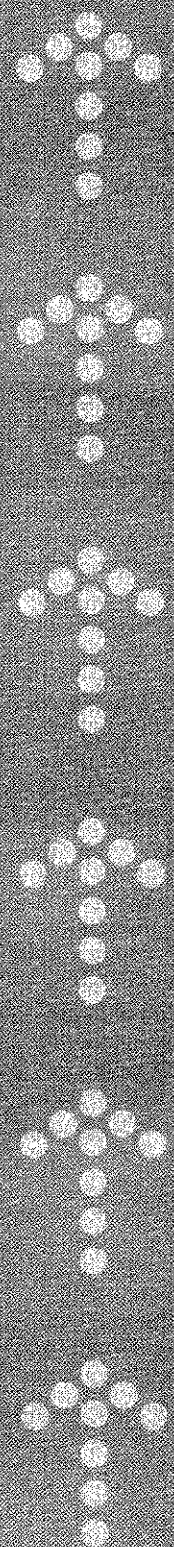
Balance Sheet

Jeff A. Taylor



Use, Robot

The Pentagon likes what it sees of combat robots built by small start-up firms such as iRobot. Troops note that a $45,000 "PackBot" is well-suited to replace soldiers in dangerous tasks such as cave clearing and urban warfare.

Adult Whim

Jennifer Downey fights local zoning ordinances to bring sex toys to the suburbs. Her small Ambiance chain aims for retail space near malls in Ohio. Local "red light district" laws restrict adult fare to decaying center cities.

Norwegian Lould

A Norwegian court finds that a program allowing users to play DVDs on Linux boxes is not an illegal tool for pirates. The Motion Picture Association of America argued that since it didn't license such a player, it was ipso facto outlawed.

Obscure Utah

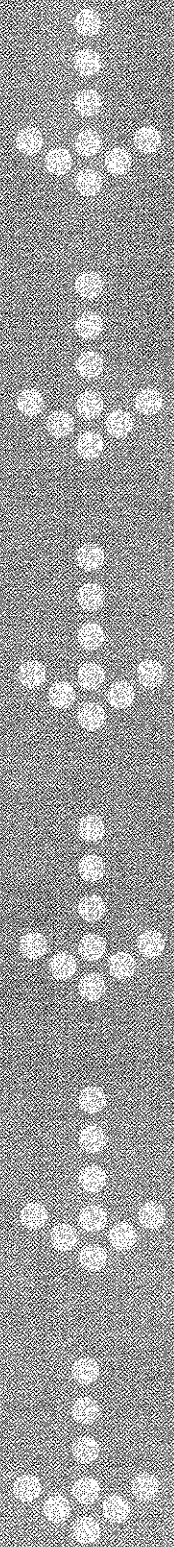
Utah's budget shortfall claims the position of state porn czar. Paula Houston's two-year reign within the attorney general's office came to an end when the boss decided he needed the money to fight real crime.

Cheap Booze

A grape glut in California allows consumers to pay pocket change for good wine, leading even discount retailers such as Wal-Mart and Target to start stocking bottles. One popular variety, Charles Shaw, retails at $1.99 a bottle. The terrible damage wrought by Prohibition may yet be undone.

Rule Book

The Bush administration launches www.regulations.gov as a one-stop shop for information on the vast regulatory state. Cruising through the thousands of proposals, rules, and notices is bound to make even the most avowed statist a little nervous.



Union Fund-raising

Indictments are handed down in a $5 million theft ring operated by top members of the Washington, D.C., teachers union. A union chauffeur—don't all public-sector unions have chauffeurs?—reportedly stuffed his pockets with $20,000 after cashing one union check.

Snow Belting

New homeland security restrictions intended to keep explosives from terrorists trip up efforts to protect ski areas from avalanches. Nonresident aliens can no longer handle explosives without clearing yards of red tape, which means snow-pack control experts from Europe, Australia, and New Zealand are off the team.

Penguin Hunter

David Boies, who ran the Justice Department's Microsoft antitrust case, now tracks down license violations for a Unix vendor. The Linux community, which often cheered Boies in his pursuit of big, bad Microsoft, is shocked and confused. It shouldn't be.

Justice Schmustice

A federal appeals court rules that Louisiana-born Taliban fighter Yasser Esam Hamdi cannot be represented by a public defender because he is an enemy combatant. The Bush administration contends that Hamdi has no right to a trial and can be jailed indefinitely.

Cold Draft

Sen. Ernest Hollings (D-S.C.) and Rep. Charles Rangel (D-N.Y.) call for a return to military conscription. War is too important to be left to volunteers, they say.

Smoke This

White House drug czar John Walters refuses to comply with Nevada state law, which requires his office to report how much it spent campaigning against the state's November 2002 marijuana initiative. Walters lit a big doobie and claimed legal immunity as a federal officeholder.

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Data

Box Check

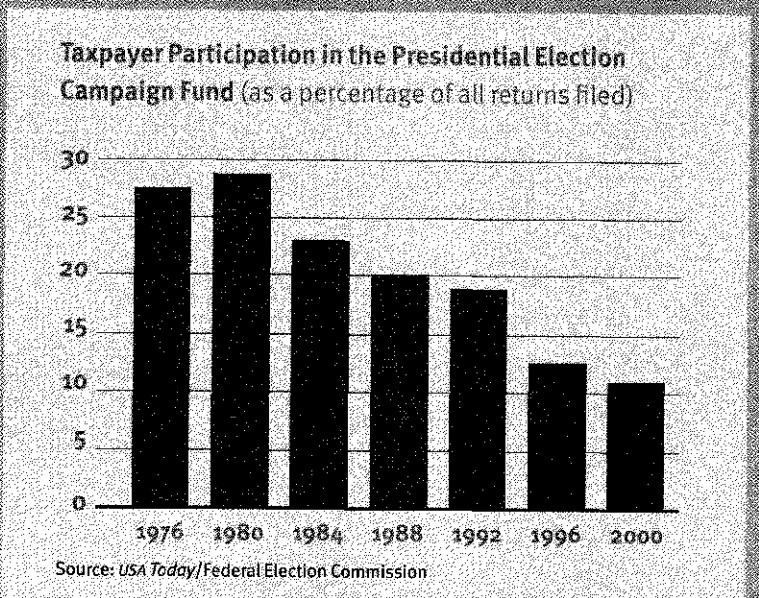
Sara Rimensnyder

Public financing for presidential elections is nearing collapse, reported *USA Today* in a breathless late-January cover story. Just 11 percent of taxpayers in 2000—compared to 27.5 percent when the system was established in 1976—checked the box on their returns that siphons $3 of their tax money into a federal election kitty. The take in 2000 totaled $210 million.

USA Today's experts portray the decline in participation as a major civic Code Red, since it suggests "eroding public awareness and support" for the presidential campaign financing system. "It would be a disaster for the country to lose the system," Fred Wertheimer of the reform group Democracy 21 told the paper. "It would put the presidency right back on the auction block."

But maybe taxpayers merely have noticed the obvious: The public financing system never took the presidency *off* the block. It does add coin to the till of established, major-party candidates—*if* they want it. President Bush didn't accept public funds for his 2000 presidential primary, preferring to sidestep the $40.5 million spending limit participation would have required.

Meanwhile, the Federal Election Commission doles out general presidential election funds only to parties that received at least 5 percent of the vote in the previous election. So, far from leveling the playing field, the system socks the smallest parties with an added financial disadvantage.



› with expatriate Lao to develop markets for their textiles and crafts. Finally, explains the Web site, villagers needed computers to perform simple business functions, such as spreadsheets and word processing.

Working with the foundation, design engineer Lee Felsenstein devised an ingenious system that uses wireless networking, low-wattage computers, and bicycle-crank generators to get locals in six villages online, despite the monsoon rains, high temperatures, and dusty air that make standard technologies untenable.

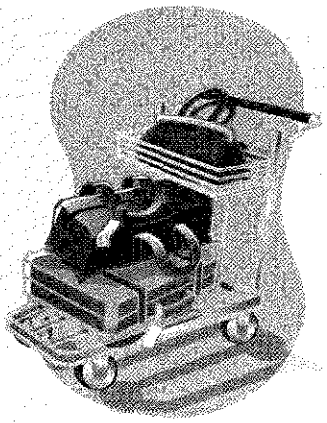
Although the Jhai Project's technical genius has attracted the most attention, another aspect of the foundation's work is worth noting. Co-founder Lee Thorn, who is now in Laos finalizing the first stage of the wireless system, operates on the principle that the locals themselves best know what tools they need to improve their lives. "We start with relationships," he explains at www.jhai.org. "We then develop projects based on cooperative visions. This logic of development is new."

It's also successful. Five years of technical and financial assistance, and a cumulative investment of $400,000, have produced results that the foundation values at $2 million in 13 different villages. ◧

Keeping track of their man

Privacy Watch

Brian Doherty



CANADA'S OFFICIAL privacy watchdog is barking mad over a newly instituted security program. Our northern neighbors are keeping a six-year database detailing the names, birthdays, citizenship status, destination flown, form of payment for ticket, and number of bags checked, among other details, for anyone flying into Canada.

George Radwanski, Canada's privacy commissioner—an official ombudsman position without the power to change the law—has been protesting to Canada's minister of national revenue, who is responsible for the program since it is officially a customs function. In a letter, Radwanski wrote that the plan is "an unprecedented intrusion... the first time the federal government has set out to build a database on all Canadians using personal information obtained from third parties [airlines] without their individual consent, for purposes not of providing any service to individuals but rather of having the information available to potentially use against them."

Radwanski solicited opinions from a retired Canadian Supreme Court justice and a former justice minister, who both concluded that the plan violates Canada's Charter of Rights and Freedoms.

Radwanski doesn't question the customs service's right to collect the data, but he does object to making the information available to other government agencies for a wide range of purposes, including income tax collection and criminal law enforcement fishing expeditions. During parliamentary hearings over the scheme, he didn't intervene

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because he was assured that "there would be no general retention" of the data collected.

Elinor Caplan, the minister of national revenue, argues that the program is necessary. "The sort of catastrophe that can be brought about by weapons of mass destruction," she says, "is without a doubt justification for keeping this information."

Canada's data collection—and the justification for it—dovetail with U.S. government policy post-9/11. In December the White House issued a long press release cheering U.S.-Canada coordination on "information sharing" and praising the Canadian air travel database. The collected data, the release announced, would be shared by both countries by spring 2003.

Disturbed Minds

Sara Rimensnyder

Joe Bob Briggs

Joe Bob Briggs, a.k.a. John Bloom, is the nation's premier reviewer of B movies and exploitation cinema—the blood-soaked, sex-laden fare that turns off genteel critics while arousing moralizing politicians. His new book, *Profoundly Disturbing: The Shocking Movies That Changed History* (Universe) takes a long, lingering look at "bad" flicks such as *Shaft*, *Deep Throat*, and *The Wild Bunch*. Full of lively film lore, Briggs shows how such movies have actually thrived on disapproval and heavily influenced mainstream cinema.

Briggs, who is best known for having created the cable TV shows *Joe Bob's Drive-In Theater* and *Monstervision*, is now a United Press International columnist and the proprietor of www.joebobbriggs.com. Assistant Editor Sara Rimensnyder spoke to him by phone in February.

Q: What's so disturbing to people about exploitation films?

A: These movies are revolutionary, to many people in a bad way. They upset the prevailing taste arbiters by pushing the two great frontiers, sex and violence. Often these movies offer a new visual way of going deeper into some aspect of sex or violence. Of course, you call it sex and violence if you hate it. If you like it, you call it romance and adventure.

Q: How have they influenced mainstream movies?

A: These low-budget genres get copied dozens of times, and eventually get cleaned up in big-budget versions that are more mainstream. Movies that win Academy Awards are the ones you can take your mother to. So *Texas Chainsaw Massacre* became *Silence of the Lambs*. *The Great Texas Dynamite Chase* became *Thelma and Louise*. *I Spit on Your Grave* became *The Accused*.

Q: Ever had the urge to whip out your chainsaw after watching *Texas Chainsaw Massacre*?

A: The claim that movies *about* sex and violence cause aberrant behavior [got a new boost] in the early 1980s when several organizations supposedly did scientific studies proving it. I've been on panels with these guys, and I've said look, if there's any truth at all to what you're saying, you should hook me up to the equipment because I've watched more of these movies than maybe anyone in the world. If there's a direct connection, I should be in San Quentin.

Q: If you could show the moral nags one movie, what would it be?

A: Actually, *Texas Chainsaw Massacre*, which 30 years after its release is still always used as an example of cultural decay and the depravity of mass entertainment. I'd have them tell me what about it revolts them so much. It's a comedy!

Q: What is the most obscene movie ever made?

A: *A Chorus Line*. Best horror film of 1985.

Zoning rebellion in Georgia

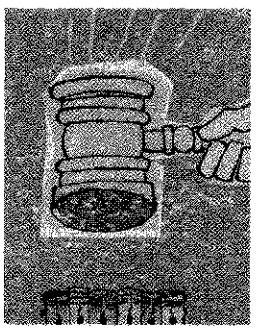
Total Deregulation

Jesse Walker

WHO SAYS DEREGULATION is dead? In December, Habersham County, Georgia, abolished all its land use regulations, fired all its building inspectors, and eliminated its planning commission. "We're going to see if people truly need to be regulated," Commissioner Jerry Tanksley explained to *The Atlanta Journal-Constitution*.

It's unclear, though, whether the experiment will last. The Home Builders Association of Habersham and White counties filed suit almost immediately, arguing that the county commission didn't have the power to eliminate zoning laws. A Mountain Circuit judge agreed and promptly ordered the county to enforce the abandoned rules. A newly elected county commission hopes to undo the rest of the December revolution by spring.

The regulatory rollback followed years of battles between small landholders and outside regulators, dating back to the Georgia Planning Act of 1989—and, on a larger scale, to the days of the 19th-century mountain men. One hot issue was Atlanta's efforts to require a minimum distance between streams and construction projects. The problem was not the rule's immediate impact: The law didn't apply to farmers, who still constitute a substantial portion of the Habersham population—and were nonetheless up in arms. The problem was that outsiders were telling the county what to do, angering a citizenry that prized both local self-government and individual property rights.



Others saw more sinister motives afoot. County Manager Ron Vandiver told the Atlanta weekly *Creative Loafing* that the rules were "meant to divide, make groups easier to bend to their submission: control, rather than protection." Conspiracy theories circulated among the citizens, prompting some to fear that the current battles were a prelude to a U.N. land grab.

Last November, however, the populists lost at the polls. One county commissioner associated with the rebellion lost his seat; another did not run for re-election. Both were replaced by politicians better disposed toward regulation, prompting the lame-duck commission to pass its wholesale repeal—a farewell present of sorts for the friends of government planning.

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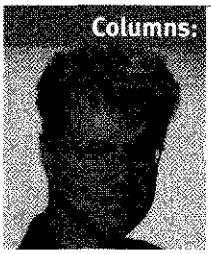

Columns: Jesse Walker

Mickey Mouse Clubbed

Disney's cartoon rodent speaks out on the *Eldred* decision.

In January, The U.S. Supreme Court ruled that the Sonny Bono Copyright Term Extension Act of 1998—so named in honor of the late Rep. Bono, and not because it extended his copyright terms—is constitutional. Prior to the Bono Act, an individually owned work was protected for the creator's life plus 50 more years; corporate-owned copyrights lasted a flat 75 years. The law extended both timespans by two decades, prompting a legal challenge by Eric Eldred, a bibliophile in New Hampshire who wanted to put digitized editions of old books online.

When the Court ruled against Eldred, the Disney Corporation issued a collective sigh of relief. Before the Bono Act passed, Mickey Mouse was set to enter the public domain in 2004, with his best-known animated pals following shortly afterward. One reason Disney put its weight behind the 1998 legislation was to keep Mickey and the gang on the plantation; Eldred's backers subsequently adopted "Free the Mouse" as an unofficial slogan.

Mickey's own reaction to the decision was less enthusiastic. Telling his keepers that he was going on an "ice run for the boss," the mouse made his way to a dive bar a few miles outside Disneyland, where he gave **reason** an exclusive interview.

reason: How does it feel to have your sentence extended by two decades?

Mickey: How do you think it feels? For almost 70 years, I've been allowed to do only what the Disney people say I can do. Sometimes someone comes up with a new idea, and I think to myself, "Great! Here's a chance to stretch myself!" But of course they won't let me leave the reservation. If I do, they send out their lawyers to bring me home.

In 1971, for instance, Dan O'Neill got me a part in a comic book called *Air Pirates Funnies*. It was great: I got to have sex, I got to use drugs, I got to explore the whole underground comix scene. It was liberating. Well, of course Disney complained. They said—this is a direct quote—that O'Neill's parody was tarnishing my "image of innocent delight." After two issues, they took us all to court for trademark violation and copyright infringement.

reason: And they never published another issue?

Mickey: Of course not. I don't think you realize how tight the clamps on me are. If I so much as flicker on a TV screen in the background of a documentary, Disney can tell the filmmakers, "Either scramble that image or pay us for permission to use it." And the courts will allow it.

reason: Some might say that it's perfectly legitimate for Disney to own you—not just now, but in perpetuity. After all, they created you.

Mickey: *Created* me? [An enormous cartoon spit take follows.]

Did you like that? It's my Daffy Duck imitation.

reason: Very nice. I didn't know you were familiar with the Warner Brothers characters.

Mickey: Poor bastards. They're gonna be locked up even longer than I am. I guess if Chuck Jones were still around to direct their cartoons, they might not mind. Instead, they have to do those stupid commercials with Michael Jordan.

Anyway. Yeah, Walt Disney created me, but he didn't create me out of nothing. Look at my skin. Look at my face. Look at this glove. I'm straight out of the minstrel show tradition—which makes this whole "ownership" business stick in my craw even more.

I'm also Buster Keaton.

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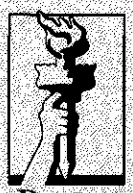

Reason

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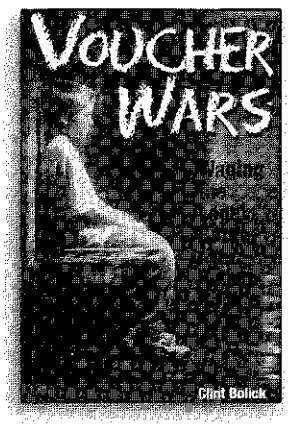

Voucher Wars: Waging the Legal Battle over School Choice

by Clint Bolick

Set against the backdrop of a public school system that consigns millions of disadvantaged children to educational inequality, the Cleveland school vouchers case, successfully appealed all the way to the Supreme Court, has brought the issue of educational freedom to national attention. Some have called it the most important lawsuit of its kind since *Brown v. Board of Education*. In this book, Clint Bolick, one of the premier fighters for school choice in the nation and counsel in the Cleveland case, recounts the drama and tactics of the 12-year battle for choice and distills crucial lessons for future educational freedom battles. 277 pp./ $20.00 cloth ISBN 1-930865-37-6/ **$12.00 paper** ISBN 1-930865-38-4

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reason: Sorry?

Mickey: My first cartoon short, *Steamboat Willie*, was a direct parody of Keaton's movie *Steamboat Bill, Jr.* On the very first page of the script, it says, "Orchestra starts playing opening verses of *Steamboat Bill*." I remember what Eldred's lawyer Larry Lessig said when he read that: "Try doing a cartoon take-off of one of Disney, Inc.'s latest films with an opening that copies the music."

So yeah, they created me. But they don't want to let other people build on me when they make their own creations, the way they did when I was born. And now I'm locked up for another 20 stinking years! Do you have any idea what it's like to have to greet kids at Disneyland every single day, always smiling, never slipping off for a cigarette?

reason: So what comes next?

Mickey: If the courts won't help us, we can always go back to Congress and try to repeal the Bono Act outright. Doesn't seem likely to happen, but I suppose we should try.

Beyond that, all I can think of is civil disobedience. Disney says I'm its property, and that any unauthorized use of me is infringement, theft, plagiarism. I say, *Don't mourn, plagiarize!* Work me into every creative act that you can, and damn the legal consequences!

You know, like you're doing right now.

reason: Come again?

Mickey: This interview. It's an unauthorized use of Mickey Mouse, a copyrighted character owned by the Disney Corporation.

reason: This is a parody, Mickey. It's protected by the fair use doctrine.

Mickey: So was *Air Pirates Funnies*, and they still dragged *them* into court. And it's only gotten worse since then. It's easy to create and distribute things digitally these days, so the big entertainment combines are in a panic, sending out cease-and-desist letters left and right. Doesn't matter if it's an open-and-shut case of fair use—the cost of a court case is disincentive enough.

reason: Hey. This isn't really Mickey Mouse, people. His name is—uh, I think it's Bruce.

Mickey: Sometimes they make a threat, and sometimes they let something slide. You never know what they're gonna go after. But don't let that stop you! Civil disobedience requires courage.

reason: He's not even a mouse. He's some sort of marsupial.

Mickey: [Sighs.] You're a sellout, Walker.

reason: I've got responsibilities, Mick—um, Bruce.

Mickey: God, you disgust me. I'm looking at another 20 years on the inside, and you can't throw one little pebble at the company that's keeping me out of the public domain?

AT THIS POINT, three Disney bounty hunters entered the bar and seized Mickey. An intense struggle reportedly ensued, but our correspondent missed it, opting instead to crawl out the men's room window. ◻

Associate Editor Jesse Walker is author of Rebels on the Air: An Alternative History of Radio in America (NYU Press).

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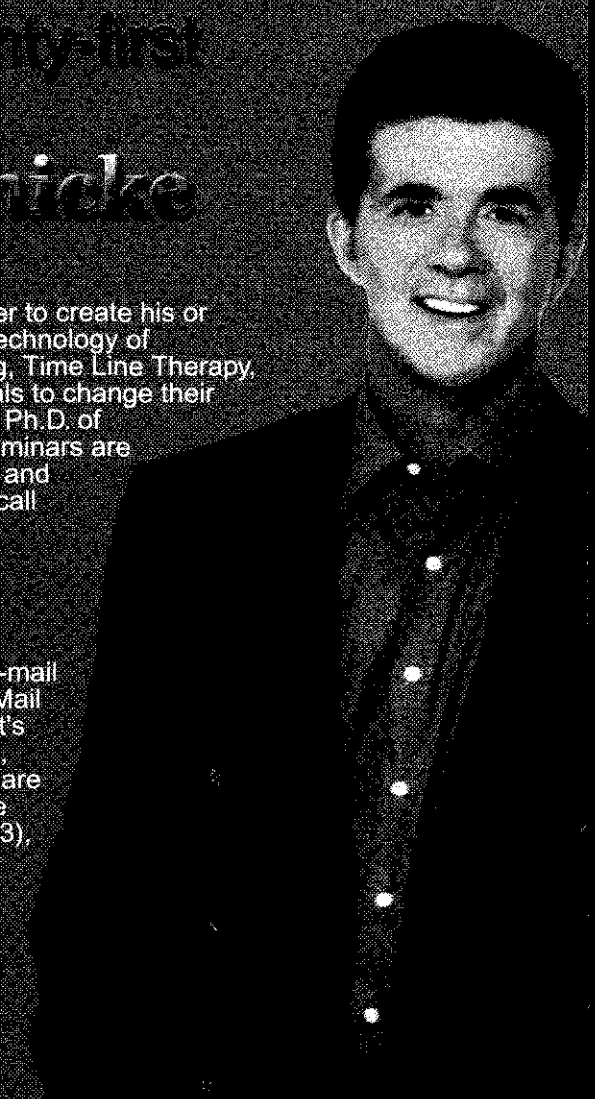

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Aborting Equality

Men's odd place in the abortion debate

THE 30TH ANNIVERSARY of *Roe v. Wade* in January evoked the usual rhetoric from the usual suspects: anti-abortion activists lamenting the slaughter of fetuses, feminists lamenting the threat to women's rights, cautious language from the president about respect for life. But in all the commentary, little attention was paid to one crucial aspect of the issue: how the availability of abortion affects relations between men and women.

Pro-choicers see legal abortion as essential to gender equality, a guarantee that a woman can enjoy sexual freedom just like a man, without an unwanted pregnancy disrupting her career or education. As one Planned Parenthood pamphlet puts it, the basic issue is, "Should women make their own decisions about family, career and how to live their lives?" Men are rarely mentioned in pro-choice commentary, except to celebrate women's freedom from male control over their reproductive lives—though supportive partners of women who have abortions may sometimes be acknowledged as well.

On the pro-life side, abortion is depicted as the epitome of several purported feminist evils: selfish and unwomanly careerism, the decline of motherly qualities, and the liberation of women from "natural distinctions" between the sexes. At the same time, in keeping with the popular conservative theme that women are oppressed by liberation, anti-abortion activists have increasingly depicted women who have abortions as victims of a society that undervalues motherhood—and of selfish, irresponsible boyfriends. Their rhetoric occasionally refers to bereaved fathers of aborted "babies" but more often invokes evil males for whom legal abortion makes it easy to seduce and abandon women.

A few maverick activists and commentators have argued that, in fact, the current legal situation puts men and women on a footing that is far from equal—and is blatantly stacked in favor of women. Women have reproductive rights, and men have reproductive responsibilities.

If a woman gets pregnant and does not want to be a mother, she can end the pregnancy with or without her partner's knowledge. If she wants to have the baby, she can force the father to pay child support—so that, as lawyer Melanie McCulley pointed out in a 1998 article for *The Journal of Law and Policy*, he "does not have the luxury, after the fact of conception, to decide that he is not ready for fatherhood."

Once, biology colluded with male privilege to ensure that women were largely the ones who paid the price (often a heavy one) for illicit sex. Scientific and social progress has changed that: Even as reliable contraception and legal abortion allowed women to control reproduction, their ability to hold absentee fathers financially liable was enhanced by new methods of establishing paternity and by friendlier laws.

The issue of men's reproductive rights occasionally surfaces in largely symbolic legal cases. In August 2002 a Philadelphia man, John Stachokus, obtained a temporary court injunction barring his former girlfriend Tanya Meyers from having an abortion—much to the dismay of feminists and pro-choicers, who called the decision "an abuse of the legal system" and "a disgrace." A few days later, the judge dissolved the order. Had he not, it undoubtedly would have been reversed on emergency appeal, like a handful of other such court orders issued in the past 30 years.

Meanwhile, a few men fighting paternity suits have argued, so far unsuccessfully, that

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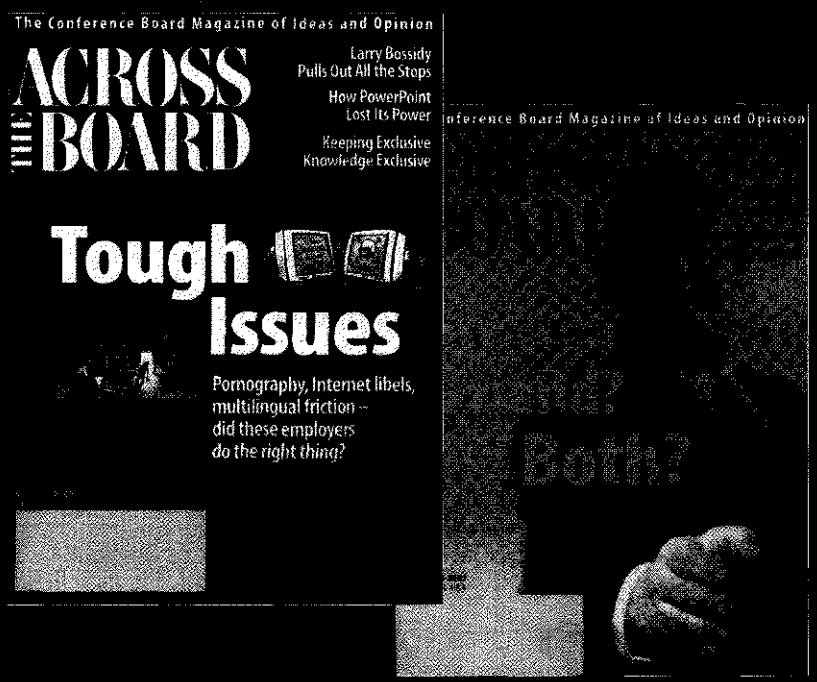
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"forced parenthood" denies men equal protection. Peter Wallis, a New Mexico real estate broker, made headlines in 1998 when he sued ex-girlfriend Kellie Smith for "intentionally acquiring and misusing" his bodily fluids by getting pregnant against his wishes. The case was quickly tossed out. Even victories by men whose child support obligations resulted from deception—when the woman lied about using birth control or even, in one bizarre case, used a syringe to inseminate herself with semen collected in a condom—have been struck down on appeal.

Public opinion has been generally unsympathetic to men in such cases. Men who want to stop their partners from having abortions are seen as domineering patriarchs. Men who want to avoid paying child support are seen as irresponsible playboys. But it's not always so simple.

Very few studies have looked at the men implicated in unwanted pregnancies. Drexel University sociologist Arthur Shostak and journalist Gary McLouth surveyed 1,000 men in abortion clinic waiting rooms and did some in-depth interviews for the 1984 book *Men and Abortion: Lessons, Losses, and Love*. They found that in most cases ending the pregnancy was a mutual decision, and only 5 percent of the men didn't want the abortion—though nearly half of the single and divorced men said that they had suggested getting married and having the baby.

As for the roughly 50 percent of men who don't show up at the clinics, various estimates cited by Shostak and McLouth suggest that while some fit the stereotype of the feckless runaway male, a significant percentage oppose the abortion or are too upset about it to come along. As many as one in six men are never told about the pregnancy or the abortion.

Occasionally, wrenching personal stories appear in articles on the subject, such as one published a few years ago in the Bergen County, New Jersey, *Record*. One man profiled in the article said he was an emotional wreck for several years after his fiancée had two abortions without consulting him; the second time, she had assured him she wanted the child, then walked out on him after an argument and terminated the pregnancy.

And the flip side? A girl who gets pregnant in high school can decide that she's not ready for motherhood. If her male classmate gets his partner pregnant, he can spend the next 21 years paying for an unwanted child, to the detriment of his education, his career, and his ability to have a family of his own. Yet if he complains about his predicament, the typical response is "You play, you pay"—uncannily similar to the attitude of some abortion opponents who say that if women want to exercise "choice" they should just keep their legs together.

Given biological realities, it may be impossible to come up with a solution that wouldn't be unfair to *someone*. The current situation is indeed inequitable to men. But allowing a paternal veto raises the disturbing specter of giving a man authority over a woman's body. Allowing men to renounce paternity obligations means that a woman who wants to avoid unwanted parenthood has to undergo surgery or drug treatment while a man merely has to fill out some forms. One could argue that 21 years of child support is a greater burden than nine months of pregnancy, but bodily autonomy is generally seen as a more fundamental value than the financial kind.

One can argue for some legal reforms—for instance, requiring that the prospective father be notified of an abortion (with exemptions for cases of domestic violence or rape), though any such measure would require the Supreme Court to reverse its 1992 *Planned Parenthood v. Casey* ruling. Limiting a mother's ability to collect child support when the pregnancy results from deceit, or to sue for retroactive support after waiting years to let the man know he has fathered a child, should be feasible as well.

The most important change may be cultural. Abortion can create a radical imbalance rather than equality between the sexes, giving women unilateral power over a reproductive process that involves two people. Can men be expected to be full partners in child rearing but mere bystanders in pregnancy?

In the feminist classic *Backlash*, Susan Faludi cites a 1990 poll in which nearly 40 percent of women said that "in making a decision about whether to have an abortion, the man involved should not even be consulted" as welcome evidence of women's embrace of reproductive freedom. She also chided men for not shouldering their load as fathers. But if men's parental role is to be taken seriously, we need, at the very least, a cultural consensus that women have a moral obligation to involve their partners in their reproductive decisions. ◻

Contributing Editor Cathy Young (cathyyoung2@cs.com) is a columnist for The Boston Globe.

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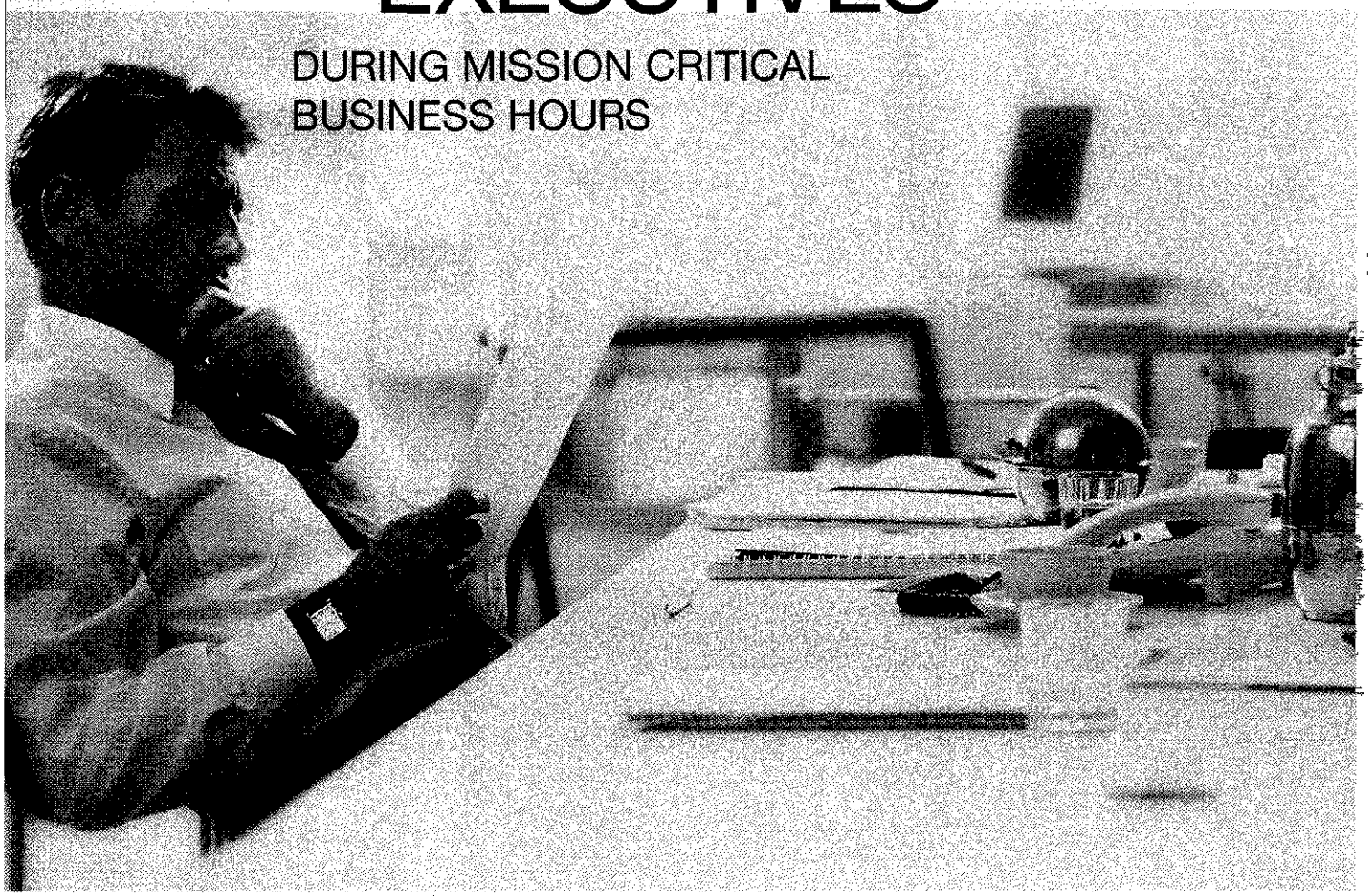

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Space Balls

NASA fights the future

THE CONTINENT-SPANNING field of debris from the tragic breakup of the space shuttle *Columbia* had barely begun to cool before National Aeronautics and Space Administration officials promised to continue the manned space program in one form or another. (Given the already huge amounts spent on the shuttle-dependent International Space Station, this effectively means continuing the shuttle program.) President Bush assured mourners that humanity's journey into space would continue, as did House Science Committee Chairman Sherwood Boehlert (R-N.Y.); public opinion polls indicated continuing strong support.

The confidence of these public assertions is encouraging. The underlying assumption, that space travel and NASA are equivalent, is not. Consider this: Since the 1986 *Challenger* explosion, the shuttle program has taken a stand against carrying commercial satellites into space.

This means NASA's cornerstone program has nothing to do with the most important space-related industry on this planet or any other, the only sector of space travel that has brought real benefits to you and me. (Not that this has put a crimp in the satellite industry, whose revenues topped $85 billion in 2002, according to the Satellite Industry Association.)

Private satellite companies emphasize goods and services rather than public relations. By contrast, consider some of the tasks performed on *Columbia*'s final voyage. Not counting familiar zero-gravity tests on ants, spiders, and bees dreamed up by school kids and performed on the shuttle for P.R. purposes, the *Columbia* astronauts studied the effects of zero gravity on prostate cancer, produced flame balls ("the weakest forms of fire ever produced"), and examined how moss responds to light and gravity.

If these experiments were conducted by, say, the Department of the Interior or a federally funded college lab—that is, if they were removed from the heroic context of space travel—they would be scoffed at as a waste of taxpayer dollars, recited in get-a-load-of-this tones by members of Congress who enjoy criticizing obscure public science projects. Only in NASA's zero-gravity logic could expanding the base of flame ball knowledge be deemed worth risking seven lives.

NASA's commitment to manned flight might make sense were the agency still getting P.R. bang for taxpayer bucks. But even devoted space buffs long ago lost interest in the shuttle program. Until the *Columbia* disaster, NASA had most recently attracted public attention last fall, when Buzz Aldrin punched the bejeezus out of a heckler.

Nor is NASA even on the cutting edge of manned space travel. Ironically, the immediate threat of budget disaster has forced our former communist competitors to become more innovative with space bucks than we are. It was the Russian space program that provided tourism opportunities for idle bazillionaires Dennis Tito and Mark Shuttleworth.

NASA, by contrast, has delayed issuing its guidelines for civilian visits to the space station, discouraged the Russians from taking Shuttleworth, and, according to cosmonauts on the trip, gave Tito the cold shoulder during his pioneering flight. Space tourism companies complain bitterly of NASA's lack of enthusiasm for their industry. (This attitude may be changing under Sean O'Keefe, President Bush's choice as NASA administrator.)

The mind-set that space travel can be taken seriously only under government supervision is a stubborn one. It's telling that many of the most vocal advocates of continued NASA manned flights are mortified at the idea of good-time Charlies like Tito, Shuttleworth, and 'N Sync star Lance Bass soiling the heavens. But this is where the real dream of space travel lives. If, more than four decades after the Wright Brothers' maiden flight, air travel had been an iron government monopoly offering no opportunities for public participation, people of the time would have called it a colossal failure. While it's tempting to render the same verdict on space travel, there are still plenty of people who believe in its future. You just won't find them at NASA. ■

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JUST SAY NO TO INTELLECTUAL PROPERTY!

PETERBAGGE@EARTHLINK.NET

1969...
CHECK THIS OUT, MAN...
IT'S ANOTHER "CEASE + DESIST" LETTER FROM DISNEY'S LEGAL DEPARTMENT...
WHAT?
THOSE SQUARES COULDN'T DEAL WITH THAT COVER YOU DREW OF GOOFY DROPPING NAPALM ON VIETNAMESE ORPHANS, IT SEEMS...
MAN, I'VE HAD IT WITH THEIR CORPORATE BULLYING!
I HEREBY VOW TO LET ANYONE USE MY OWN ART IN ANY WAY THEY WANT!
IDEAS BELONG TO THE PEOPLE, MAN!
RIGHT ON!
—SAY, YOU SHOULD PUT THAT IN WRITING!
MONTHS LATER...
?!?
THAT BAND USED MY ART WITHOUT MY PERMISSION!
THEY DON'T NEED YOUR PERMISSION. REMEMBER YOUR "VOW"?
(TRY NOT TO LOSE YOUR COOL, MAN...YOU'VE GOT A REP TO UPHOLD)...
(BESIDES, THIS IS GOOD EXPOSURE)
BUT I HATE THIS BAND...
YEARS LATER...
...ALL THE KIDS ARE DRINKING ZAP SODA...
HEY! THAT TV AD COPPED MY DRAWING STYLE!
SO? THEY'RE JUST TRYING TO APPEAL TO TODAY'S YOUTH, IS ALL...
YOU SHOULD BE FLATTERED!
BESIDES, THINK OF THE EX-POSURE—
EXPOSURE TO WHAT? MORE RIP-OFFS?
...BE A PART OF THE ZAP GENERATION!
SSSSSUCK
DECADES LATER...
—OH NO! SOME POLITICIAN IS USING ONE OF MY OLD CHARACTERS IN HIS CAMPAIGN POSTERS!
THE BIG FAT HIPPIE SEZ:
TRUCK ON DOWN TO THE POLLING BOOTH AND VOTE FOR ED SCHMUCK!
YEAH, HE'S USING NOSTALGIA TO APPEAL TO THE BOOMER VOTE...
BUT HE'S A REPUBLI-CAN!
AT LEAST IT ISN'T AS BAD AS THE TIME THOSE NEO-NAZIS USED YOUR ART TO ILLUSTRATE THEIR NEWSLETTER...
EVENTUALLY...
I PROBABLY COULD AFFORD HEALTH INSURANCE IF I HADN'T MISSED OUT ON A LIFETIME OF ROYALTIES...
PERHAPS, BUT YOU STUCK TO YOUR PRINCIPLES AND YOU CAN'T PUT A PRICE ON THAT...
IN FACT, YOUR LEGACY WILL BE SO VALUABLE ONCE YOU'RE DEAD THAT I STRUCK A DEAL WITH THE FRANKLIN MINT...
?!?
CHECK IT OUT, MAN...
IT'S A SET OF COLLECTOR PLATES FEATURING YOUR OLD CHARACTERS!
PRETTY COOL, HUH?
THE BIG FAT HIPPIE

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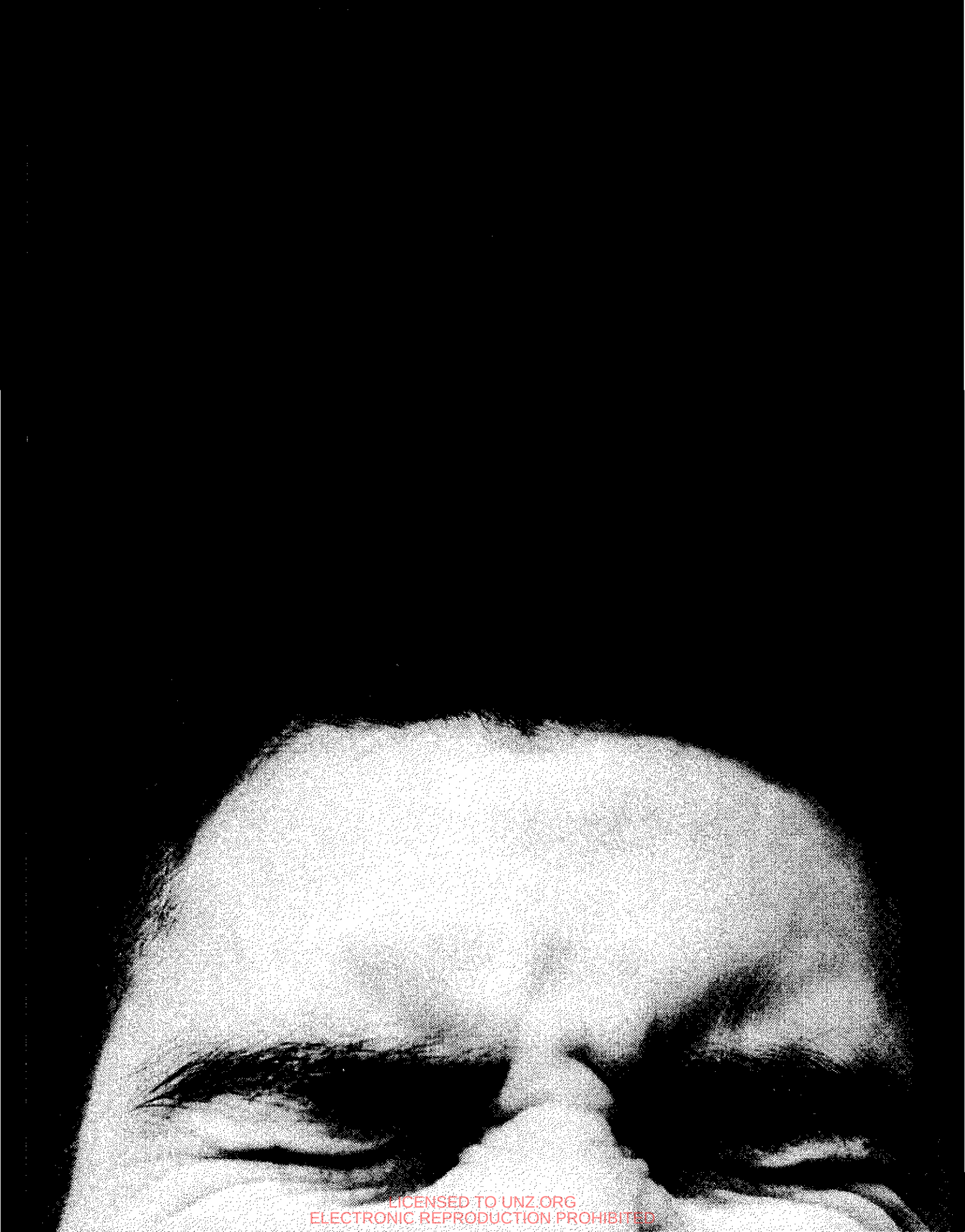

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The Agony and the Ecstasy

How the OxyContin crackdown hurts patients in pain

Melinda Ammann

William E. Hurwitz spent much of last year trying to find new doctors for his patients. It wasn't easy, since physicians often are reluctant to treat chronic pain. They worry that repeated prescriptions for large doses of narcotic painkillers will attract unwanted attention from the government. That anxiety was the main reason Hurwitz had ended up treating so many people for pain—about 300 patients suffering from cancer, rheumatoid arthritis, degenerative disc disease, diabetic complications, and other painful conditions. Some of them had searched for months or years, growing increasingly desperate, before finding him. Many lived hundreds of miles from his Northern Virginia office.

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Hurwitz's retirement was not exactly voluntary. A veteran of battles with state regulators and the Drug Enforcement Administration (DEA), the 57-year-old internist saw more trouble on the horizon. After learning that he had been targeted by a federal grand jury investigation of prescription drug diversion, he decided to gradually transfer his patients rather than put them at risk of suddenly losing access to pain medication.

Hurwitz was still working to match patients with new doctors in November, when the DEA raided his home and office. "There are patients in Vermont, Massachusetts, Maine, Connecticut, West Virginia, Virginia, Kentucky, Tennessee, North and South Carolina, and Florida for whom possible referrals are needed," he said in a written statement. In the raid, DEA agents "took patient files, financial and other records, my cell phone, and miscellaneous items. They also copied the hard drives on many of my computers and took my server, as they did not have the equipment to copy this in the office. Fortunately, I had backup files and was able to re-establish my computer network and resume patient care."

But the raid reinforced Hurwitz's concern about his patients' future. "The stigma that these people suffer, both as pain patients on opioid medications in general and as former patients of accused doctors in particular, tends to foreclose most opportunities for effective continuing care," he said last August in a written statement that announced he would be closing his practice. Last summer one of his patients told *The Washington Post*, "If I go to a doctor and mention [Hurwitz's] name, they won't even touch me. All I'm concerned about is getting rid of this excruciating pain." Another said: "I don't know what I'm going to do. While the criminals who are diverting the drugs get jailed, the innocent patients get the death penalty."

Facing the prospect of criminal prosecution after two regulatory actions against him, Hurwitz certainly understood why doctors are leery of pain patients. Hurwitz lost his state medical license and his federal prescribing privileges in 1996 after the Virginia Board of Medicine and the DEA accused him of excessive prescribing. (See "No Relief in Sight," January 1997.) More than 50 of his patients testified on his behalf at the board's hearing, and pain experts came to his defense, describing the large doses of narcotics he prescribed as reasonable and appropriate. His Virginia license was restored in 1997, and in 1998 he resumed his practice after the DEA reinstated the registration that allows doctors to prescribe controlled substances.

Four years later, however, Hurwitz was giving up. "These aggressive and ill-informed prosecutions convey a message of intimidation to doctors and indifference to the plight of patients in pain," he said in his August statement. "Not even the most honest and competent doctors can practice pain medicine with any assurance of safety for themselves or continuity of care for their patients."

The OxyContin "Epidemic"

The focus of the investigation that finally convinced Hurwitz to stop practicing medicine was OxyContin, a drug that in recent years has been portrayed as a seductive, deadly menace. The news media have advertised its "heroin-like high," generating interest among drug users and alarm among politicians. U.S. Rep. James Greenwood (R-Pa.), who held hearings on the subject in August 2001, asserted that "OxyContin is to prescription drug pain relievers what jet fuel is to unleaded gasoline." That year the Food and Drug Administration (FDA) slapped a "black box warning" onto OxyContin declaring that it has "an abuse potential similar to morphine." The DEA has identified OxyContin as "a major drug of concern," putting it alongside Ecstasy, cocaine, heroin, methamphetamine, and marijuana. Attention from the government has triggered more press coverage, which in turn has egged on drug warriors who are convinced we are in the midst of an "OxyContin epidemic."

For Hurwitz's former patients and other people in pain, OxyContin is not an agent of a metaphorical disease; it is a medication that helps relieve the suffering caused by their all-too-real illnesses and injuries. Introduced by Purdue Pharma in 1995, OxyContin is a 12-hour, timed-release form of oxycodone, a synthetic opioid that has long been available in products such as Percocet, Percodan, and Tylox. OxyContin quickly became the most prescribed narcotic on Schedule II of the Controlled Substances Act (the most tightly regulated category of medication), with about 7.2 million prescriptions in 2001. It was a godsend for patients suffering from moderate to severe chronic pain, who could use it to get steady relief throughout the day.

Because some versions of OxyContin contained large doses of oxycodone (up to 160 milligrams), unmixed with analgesics such as acetaminophen or aspirin, it appealed to drug users looking for a handy way to get high. They discovered they could get all the oxycodone at once by crushing the tablets and snorting the powder or mixing it with water and injecting it. The crackdown triggered by such nonmedical use has made doctors wary of OxyContin. "While complete data for 2002 [are] not available," Purdue Pharma reports, "the growth in the number of prescriptions

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written has dropped compared to 2001." The government's response to OxyContin abuse also has increased doctors' apprehension about prescribing narcotics in general. The upshot is unnecessary suffering by patients who have trouble getting adequate pain treatment.

The consequences of an unreasonable aversion to narcotics, which pain experts call "opiophobia," can be severe, even deadly. In a May 2001 report to the American Society for Action on Pain (ASAP), a Kentucky physician said a former patient, a paraplegic with severe chronic pain, had killed himself. The man's new doctor, alarmed by official warnings about OxyContin, had drastically reduced his dose, leaving him in agony.

Skip Baker, ASAP's president, has collected petition signatures from thousands of pain patients concerned about the loss of effective treatment. "Many of them mention that they were taken off OxyContin because of the 'bad press' about it after having been on it for years," says Baker, who suffers from chronic pain caused by ankylosing spondylitis and fibromyalgia. "It has really been a crisis for us. Even my good pain doctor will not prescribe OxyContin, even though he knows it's the best pain medicine ever made. He admits that it's all because of how law enforcement's efforts have made it look so bad that doctors dare not prescribe it."

Looking Over Doctors' Shoulders

The negative publicity surrounding OxyContin has aggravated a longstanding problem. Beginning in the 1970s, studies repeatedly have found that pain is undertreated even in hospitals and nursing homes, even with patients on the verge of death. Last July an expert panel convened by the National Institutes of Health (NIH) confirmed that people with cancer still suffer needlessly from pain.

One member of the NIH panel, Dr. Paul Frame of Rochester University's School of Medicine, said restrictions aimed at preventing nonmedical use were partly to blame for the undertreatment of pain. "Sometimes doctors don't want to go to the hassle of prescribing a triplicate drug," he said at a press conference, referring to the special forms required by some states for strong painkillers. "They may decide to use something less effective instead."

In response to concerns about OxyContin abuse, states are monitoring painkiller prescriptions even more closely. Virginia, for example, does not require triplicate forms, but starting this year it will track prescriptions for Schedule II drugs electronically, with a special focus on OxyContin. Lawmakers such as Rep. Greenwood have suggested establishing a similar monitoring program at the national level.

Privacy concerns aside, such efforts deter legitimate treatment as well as diversion for nonmedical use because it is impossible to verify pain objectively. Although physicians can take medical histories, check records, perform examinations, and do tests to confirm an injury or an illness, they ultimately have to decide whether to believe a patient who says he is suffering. Knowing that their judgment may be second-guessed by state or federal regulators, with consequences ranging from disruption of their practices to professional ruin, they naturally are reluctant to err on the side of trusting the patient.

"Pain patients are now treated like common street junkies when they turn to their local emergency rooms for help," says Tammy Alender, one of the patients who signed the ASAP petition. Alender, who suffers chronic back pain despite surgery aimed at correcting the problem, is anxious to get the word out that opioids must remain available to pain patients despite the potential for abuse. "They struggle to find adequate amounts of ongoing opiate medications to treat their valid conditions," she says. "To punish the masses of valid chronic pain patients just because of the actions of the few addicts out there is insane."

The deaths the DEA attributes to OxyContin over a period of two years represent just one-third of the deaths linked to acetaminophen in a single year. Yet the government has not declared Tylenol a "major drug of concern."

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The American Pain Foundation estimates that 50 million people in the U.S. suffer from chronic pain, much of it undertreated. As of April 2002, the DEA counted 146 "verified" deaths involving OxyContin—cases where OxyContin was the source of oxycodone found in someone's body but not necessarily the cause of death. Even in these cases, the subjects usually had taken alcohol or other drugs in addition to oxycodone. But let us accept the DEA's number for the sake of argument. The deaths it attributes to OxyContin over a period of two years represent just one-third of the deaths linked to acetaminophen in a single year. Yet the DEA has not declared Tylenol a "major drug of concern."

The Threat of Prison

To understand how the recklessness of a few OxyContin users can threaten the welfare of millions, consider the case of James Graves, a Florida physician who was sentenced in February 2001 to 63 years in federal prison. Graves was convicted of manslaughter and racketeering after four of his patients overdosed on OxyContin. It was the first time in U.S. history that a physician was found guilty of manslaughter for prescribing a self-administered medication that led to a patient's death. It probably won't be the last.

The racketeering conviction was based on the state's argument that Graves used his business for ongoing criminal activity by knowingly and recklessly prescribing opioids to patients without a medical purpose. Graves, who believes patients have a right to treatment for their pain, says he trusted their self-reports. His attorney, Michael Gibson, pleads a lack of technology to confirm the existence and severity of pain. "You can do an X-ray or an MRI," he says, "but it's very difficult to determine the level of pain. You might as well flip a coin looking at an X-ray."

Gibson says the DEA declined to get involved in the case because there was insufficient evidence of intent. He argues that the evidence to support the manslaughter charges was particularly weak. Two of the four patients were injecting OxyContin, which is never directed by prescription. Another took OxyContin prescribed by Graves as well as narcotics procured through his girlfriend. The fourth died of a multiple overdose including Xanax, Lortab, and a muscle relaxer as well as OxyContin. "Where does society assess fault?" Gibson asks. "When do you start making individual patients responsible for their actions?"

The prosecution argued that Graves was not sufficiently skeptical about his patients' reports of pain, and perhaps he wasn't. Patients who testified for the prosecution said they were not thoroughly examined. The prosecution also argued that Graves kept insufficient medical records, including notes on patient exams. But the precedent of a manslaughter conviction for what may have amounted to nothing more than excessive credulousness is apt to give pause even to doctors who are models of thoroughness. Gibson worries that the case will make doctors less likely to trust their patients, especially those with any history of addiction. He argues that "doctors should practice medicine, not law enforcement"—a refrain echoed by patient advocates such as William Hurwitz and the National Migraine Association.

Graves' conviction may signal a trend toward holding doctors criminally accountable for their patient's self-inflicted injuries. In July 2001 West Palm Beach physician Denis Deonarine was charged with first-degree murder after one of his patients overdosed on OxyContin. Prosecutors argue that Deonarine is responsible for the death despite the fact that the drug was self-administered by a patient with a history of substance abuse whose body at the time of death contained significant levels of alcohol and tranquilizers as well as OxyContin. At least one other doctor in Florida and one in California face manslaughter charges based on their patients' OxyContin overdoses.

"People like me who suffer every day aren't concerned about addiction or being labeled as druggies. We just want out of pain, and OxyContin will do it. Is a diabetic person who is dependent upon insulin considered an addict?"

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In addition to lax doctors, OxyContin critics blame the drug's manufacturer for marketing it too aggressively and not paying enough attention to its abuse potential. Thrown on the defensive by these charges, Purdue Pharma has been bending over backward to cooperate with regulators. In May 2001 the company suspended sales of its 160-milligram tablet, designed for patients with end-stage cancer. Two months later, it praised the FDA's intimidating new warning label and distributed a "Dear Healthcare Professional" letter to explain the change and highlight the risks of diversion and abuse.

The company also has promised to develop a more abuse-resistant formulation of OxyContin within the next three years. It is working on a version containing naltrexone, an opiate antagonist that would block oxycodone's euphoric effects once the pill was crushed. Although an abuse-proof alternative that retains OxyContin's effectiveness for treating pain has not yet been developed, some members of Congress want the FDA to require such a mechanism. So far the FDA has stood by its policy of approving Schedule II drugs without demanding that they incorporate antagonists. Such a requirement would further lengthen the drug approval process and could undermine the effectiveness of painkillers.

Hillbilly Heroin

The demands for immediate and drastic regulatory action are not surprising given the overheated press coverage of OxyContin abuse, which by the summer of 2001 had become the Next Big Drug Story. "It crept down the Appalachian Mountains from Maine to Alabama," began an August 2001 report in *The Atlanta Journal-Constitution*, "sending hundreds of victims to morgues, hospitals and rehab clinics." *Time* blamed OxyContin for "a blizzard of a crime wave" cropping up in "pockets of the nation." *The Cincinnati Enquirer* called it the "heroin of the Midwest." Florida's *Port St. Lucie News* dubbed it the "new crack." Other media outlets suggested "hillbilly heroin" and "poor man's heroin."

There was a measure of truth to some of these epithets. "This is an isolated area where it's hard for people to get real street drugs," says Phil Fisher, head of the Appalachian Pain Foundation, a West Virginia–based group trying to educate the medical community and public about the benefits of OxyContin. "OxyContin is not a street drug in most places." As a legal prescription medicine, OxyContin also may appeal to drug users who are leery of black-market heroin—especially if they've seen the newspaper, magazine, and TV stories that describe how great the high is and explain how to achieve it.

A "former OxyContin abuser" interviewed by ABC in March 2002 said the drug gave him "an immediate warm feeling, feeling of well-being, almost—I don't want to say godliness, but a feeling there's nothing I can't handle." A July 2001 *New York Times Magazine* story, "The Alchemy of OxyContin," put it this way: "As a pill it brings potent pain relief. As a powder it brings euphoria. It takes about five seconds to effect the transformation—and not much longer to create an addict." Similarly hyperbolic reporting has been featured by other prominent media outlets, including *Time*, *Newsweek*, CBS, and even MTV, which aired "I'm Hooked on OxyContin" as an episode of its *True Life* series in 2001.

OxyContin was compared to heroin so many times that some people concluded it should be treated the same way. After James Graves' conviction, West Virginia state Sen. Truman Chafin suggested reclassifying OxyContin as a Schedule I drug, which would make it illegal for any purpose. Pain patients breathed a sigh of relief when other state officials, doctors, and pharmacists dismissed the idea. "To prevent terminally ill patients who are in need of legitimate pain management from obtaining a drug that effectively relieves their pain is not the answer," said the West Virginia Board of Pharmacy.

Yet increased scrutiny of prescriptions is bound to have a chilling effect on doctors' decisions about which patients to treat and how. In addition to monitoring at the state level, the DEA requested $24.6 million and 133 new positions for 2003 to strengthen its diversion control efforts. The agency has drawn up a "National Action Plan" targeting key sources of OxyContin and other opioids, including medical professionals it considers unscrupulous as well as doctor shoppers, prescription forgers, and pharmacy robbers.

"The growing national plague of Oxy addictions, overdoses, and deaths caused by the illegal activity of some doctors, pharmacists, and patients has been focused on like a laser beam by this office and other U.S. attorneys' offices," Gene Rossi, a federal prosecutor in Alexandria, Virginia, told *The Washington Post* in August. "If any person falls into one of those three categories, our office will try our best to root that person out like the Taliban. Stay tuned."

The menace depicted by drug warriors like Rossi bears little resemblance to the medicine that helps patients keep agony at bay. Thomas Rogers, for instance, is a healthy 31-year-old man—healthy, that is, except for the degenerative disc disease that gives him chronic back pain. He has opted to forgo spinal lumbar fusions, which would involve

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the removal of natural discs and the insertion of rods or screws in his back, in the hope that a less invasive procedure will soon be available. His pain has been treated effectively with OxyContin by an Atlanta-based physician for three years.

"I would give anything to have a healthy, strong back like most 31-year-olds have," Rogers says, "but this is the way things are for me, and thankfully OxyContin has given me some sort of a life since I've been taking it....As long as I have a good doctor who understands and science can produce meds like OxyContin, life is livable. I could not live with the constant pain in my lower back without the benefits of this drug."

Gerald M. Aronoff, medical director of the North American Pain and Disability Group, has written several books and articles about chronic pain management. In his view, OxyContin is an excellent sustained-action opioid that has gotten a bad rap. "We're in a mode where everyone's picking on opioids," Aronoff says. "They are not terrible drugs.... They have a wider margin of safety than the nonsteroidal anti-inflammatory drugs" such as acetaminophen and ibuprofen, because they carry less risk to the liver and the gastrointestinal tract. Removing them from the market would mean a "major step backward in our ability to manage pain," he says.

Addicted to Pain Relief

Much of the concern about OxyContin stems from a misunderstanding of addiction. Aronoff observes that people mistakenly equate addiction with tolerance (the need for higher doses to achieve the same effect) and so-called physical dependence, changes in the body that lead to withdrawal symptoms if the drug is abruptly withdrawn. Anyone who takes an opioid like OxyContin every day will eventually develop tolerance and physical dependence, but addiction requires an attachment to the drug's psychoactive effects. "Addiction is characterized by the repeated, compulsive use of a substance despite adverse social, psychological, and/or physical consequences," says Aronoff. "Addiction is often, but not always, accompanied by physical dependence, withdrawal syndrome, and tolerance."

Conversely, people who take OxyContin and other opioids for pain may develop tolerance and physical dependence, but that doesn't mean they're addicted. Several studies conducted during the last few decades have found that patients who receive narcotics for pain rarely end up seeking the drug for nonmedical reasons. "One study found that only 4 out of about 12,000 patients who were given opioids for acute pain became addicted," the National Institute on Drug Abuse reports. "In a study of 38 chronic pain patients, most of whom received opioids for four to seven years, only two patients became addicted, and both had a history of drug abuse."

Geov Parrish, a Seattle-based writer who has been taking OxyContin for seven years, pokes fun at the confusion about addiction perpetuated by media hype. "OxyContin is a narcotic, and I am 'addicted' to it, in the sense that if I don't take it I'd get nasty withdrawal symptoms," he writes on *WorkingForChange.com*. "In terms of whether my body would be unhappy if I didn't ingest it, I'm also 'addicted' to a number of other prescribed drugs, and to food, water, oxygen, and my sweetie. Addiction is an overrated concept."

Parrish says he tried various pain medications after an organ transplant left him with debilitating pain, but oxycodone is the only one that works. "If I weren't on it, I couldn't function from day to day," he writes. "And for many, many people with cancer, AIDS, and other serious ailments, it's the difference between a relatively normal life and day after day of pure hell."

Thomas Rogers concedes that his 12-hour OxyContin dose has doubled, from 10 to 20 milligrams, since he began taking the drug three years ago. He is also well aware that he would have to go off OxyContin gradually to avoid withdrawal symptoms. But he doesn't consider himself an addict. "People like me who suffer every day aren't concerned about addiction or being labeled as druggies," he says. "We just want out of pain, and OxyContin will do it when we are being treated by good doctors. Is a diabetic person who is dependent upon insulin considered an addict? Are people who take OxyContin any different? We depend on a drug to help our pain so that we don't get depressed and suicidal. I personally don't like waking up every single morning hurting and knowing that it may very well be this way the rest of my life."

Rogers resents anti-OxyContin crusaders who gloss over or ignore the drug's benefits for pain patients like him. "Their backs probably don't hurt," he says. "No matter what kind of drug is ever produced, there will always be people who will abuse it and give it a bad name. These people never represent the thousands of legitimate patients like me who are not addicted but depend on it for some kind of life, as pain-free as possible." ▮

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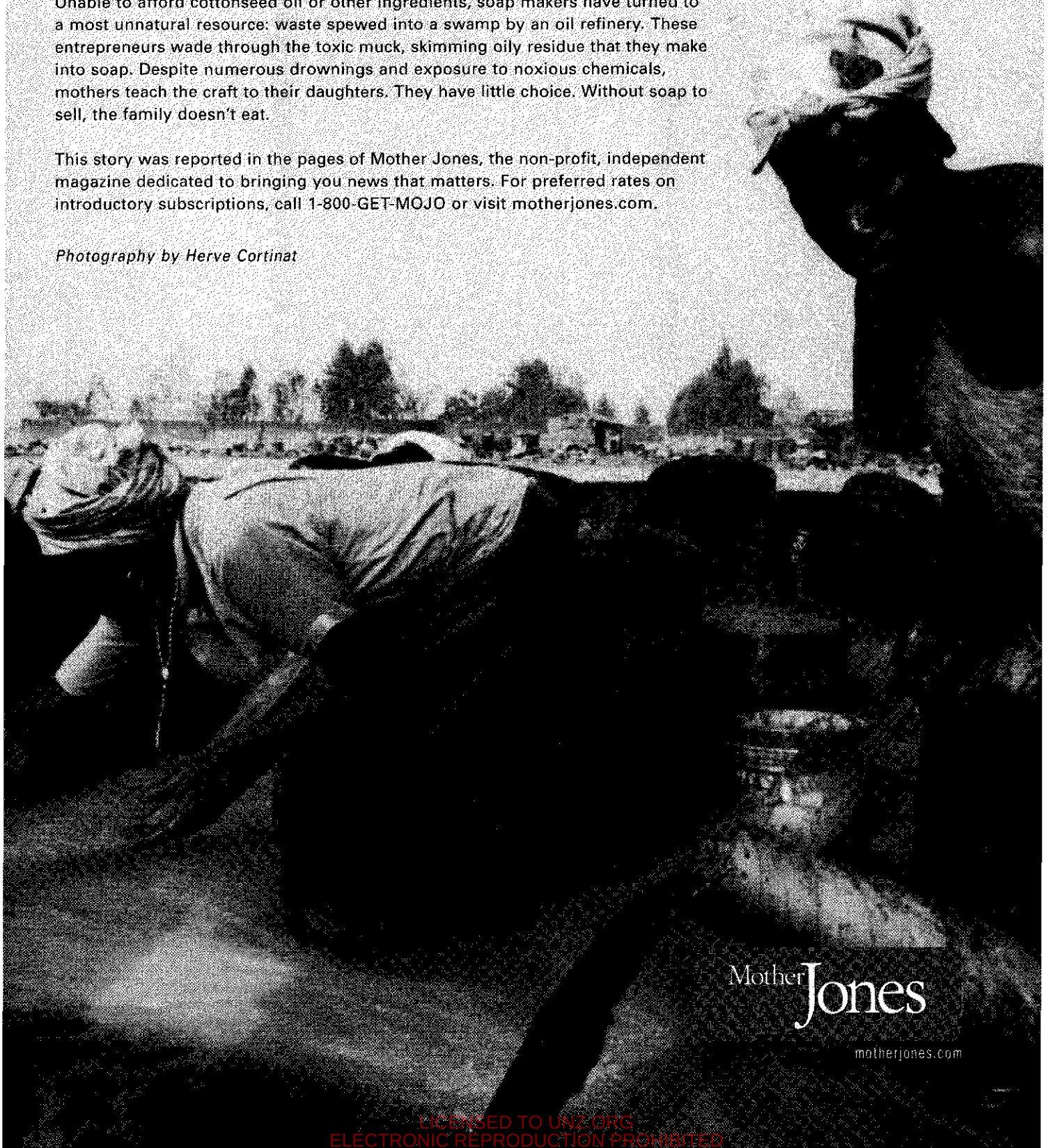
WHILE MAINSTREAM NEWS WAS BUSY COVERING "SURVIVOR" THE TV SHOW, THE WOMEN OF BURKINA FASO WERE PLAYING IT FOR REAL.

With celebrity fluff and infotainment often masquerading as "news," you're less likely to hear about desperate places like Burkina Faso, a West African nation where more than 50% of the people live in poverty.

Unable to afford cottonseed oil or other ingredients, soap makers have turned to a most unnatural resource: waste spewed into a swamp by an oil refinery. These entrepreneurs wade through the toxic muck, skimming oily residue that they make into soap. Despite numerous drownings and exposure to noxious chemicals, mothers teach the craft to their daughters. They have little choice. Without soap to sell, the family doesn't eat.

This story was reported in the pages of Mother Jones, the non-profit, independent magazine dedicated to bringing you news that matters. For preferred rates on introductory subscriptions, call 1-800-GET-MOJO or visit motherjones.com.

Photography by Herve Cortinat



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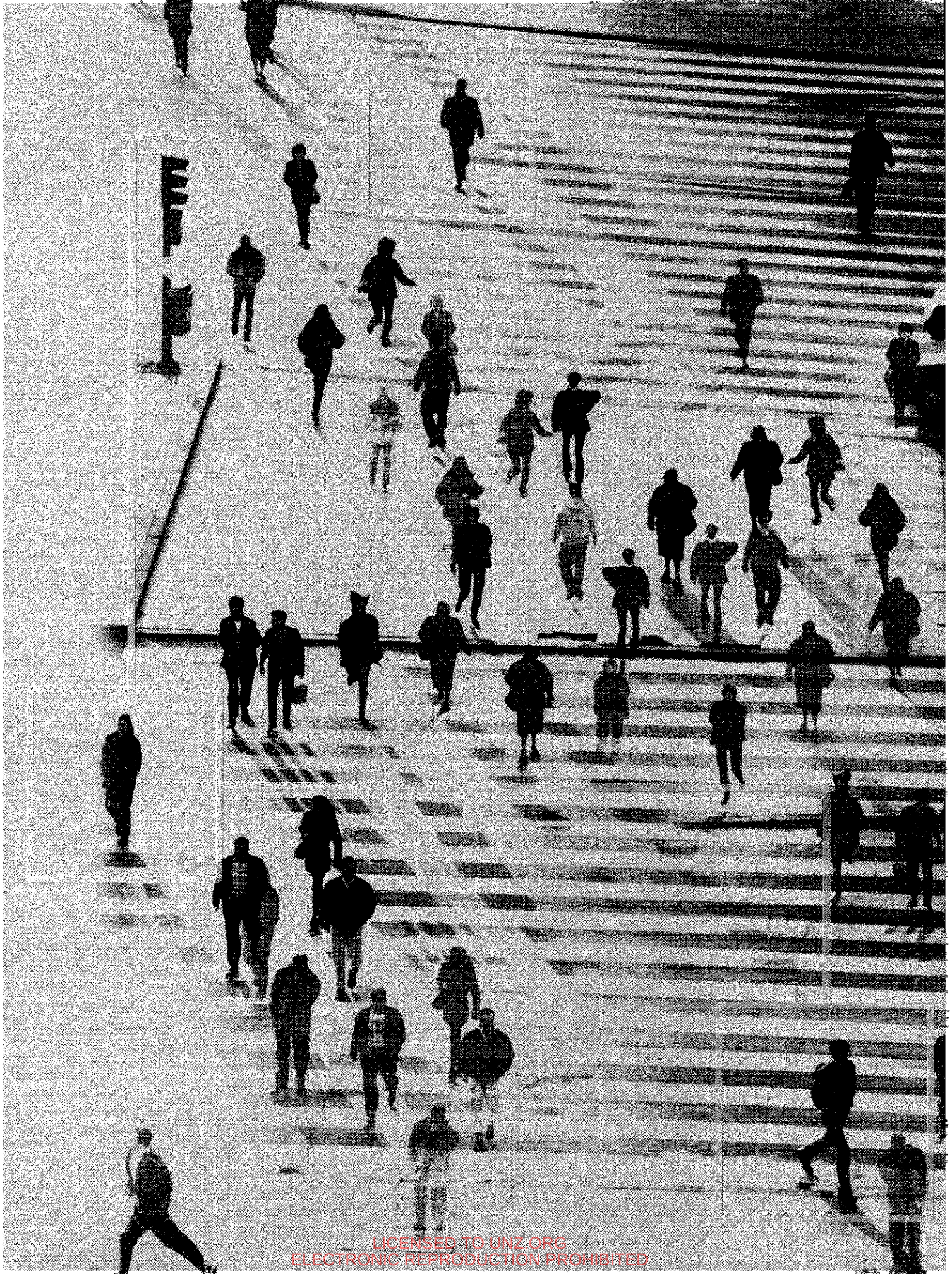

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Is That a Computer in Your Pants?

Cyberculture chronicler Howard Rheingold on smart mobs, smart environments, and smart choices in an age of connectivity

Interviewed by Jesse Walker

SINCE 1968, THE *Whole Earth Catalog* has been a valuable sourcebook for freethinkers, do-it-yourselfers, and back-to-the-landers. Its most recent full-fledged catalog, published in 1994, opened by noting that the price of computing "has dropped so far since the first *Whole Earth Catalog* that we have entered the era of desktop everything: desktop publishing, desktop audio, desktop video. Book publishing, radio and television production, and music distribution used to require buildings full of heavy machinery. Communications capabilities once reserved for government or corporate elites now reside in tens of millions of citizens' desktops."

It is a sign of how quickly technology can evolve that those desktops, once the sign of individual liberation, now seem somewhat clunky themselves. Less than a decade after the catalog's then-editor wrote those words, the equivalent computing power can be found not just on desks but in people's pockets. The social implications of that revolution are discussed in *Smart Mobs: The Next Social Revolution* (Perseus, 2002), the most recent book by the man who described the desktop revolution in 1994: Howard Rheingold.

Rheingold has spent more than two decades at the intersection between the cyberculture and the counterculture, including a mid-'80s stint as one of the hosts of the WELL, a *Whole Earth*–sponsored venture that was one of the most successful early online communities. (It still exists today.) The 55-year-old writer has served as editor of the *Whole Earth Review* and of *HotWired* and has written several books, of which the most famous is *The Virtual Community* (1993), a study of the associations people form online.

In *Smart Mobs*, Rheingold observes people communicating via cell phones, pagers, and hand-held computers, explores the new forms of social interaction he sees emerging, and asks what will happen when those technologies become ubiquitous. The book also describes the ongoing effort to add computing power to our environment—the buildings we occupy, the objects we buy, even the clothes we wear—and speculates about what will happen as electronically equipped people interact with this electronically equipped terrain.

Rheingold is no Pollyanna. In his book and his weblog, smartmobs.com, he strikes a careful balance between skepticism and enthusiasm. He's not a determinist either: He recognizes that there are many different ways these technologies could evolve and many different battlegrounds where their social context is being shaped. The book's most interesting investigations center on those political battles and on the question that lurks behind almost all of them: As the line between real space and cyberspace begins to fade, how much power will ordinary people have over the online world?

Rheingold currently lives in Mill Valley, California. Associate Editor Jesse Walker spoke with him in January.

reason: What's the difference between a community and a mob?

Howard Rheingold: The whole notion of "community" is a vast, fuzzy semantic and political swamp. But I think people in communities know each other and have relationships. People in mobs don't necessarily have those relationships.

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The same thing is true of a market. People who buy and sell stock together determine collectively the price of those stocks through their transactions. They are engaged together in a collective action. They don't know each other.

reason: What forms of collective behavior are emerging from smart-mob technology?

Rheingold: On the political level, you're seeing peaceful democratic demonstrations like the ones [that brought down President Joseph Estrada] in the Philippines. You're also seeing riots, like the Miss World riots in Nigeria. Not all forms of human cooperation are prosocial. Some of them are antisocial.

In South Korea, Kenya, and the U.S., mobile communications devices helped sway the results of recent elections. In Kenya they feared corruption would enter the process when they shipped the ballot boxes to a central counting place, so poll watchers reported the results directly from the polls instead. In Korea there was a last-minute surge for a candidate who ultimately won that was organized mostly by people using the Internet and SMS [short message service] devices, sending out text messages at the last moment. And in the U.S. election, Karl Rove, Bush's political strategist, constantly used his Blackberry [handheld Internet device] to coordinate actions by Republican poll workers getting out the vote.

reason: Someone might say, "Well, people get on the phone and organize political action all the time."

Rheingold: A phone tree isn't an ancient form of political organizing, but you have to call every person. One of the reasons why the street demonstrations in the Philippines worked, and the riots in Nigeria worked, is that you can send a text message to people and they can forward it to everyone in their address books. So you can communicate with a very large network very quickly in a way that you simply can't with a telephone.

Also, a lot of people message and use the telephone at the same time. Particularly in business—if you're having a telephone conversation, and someone asks you a question about marketing or engineering, you can get an answer instantaneously from someone who has marketing or engineering information.

Teenagers in Japan and elsewhere use it precisely because you can communicate silently. Your parents or your teachers can't hear you.

reason: That's a more decentralized process than you have with, for example, Karl Rove getting out the vote.

Rheingold: Well, he's coordinating. You have a mixture of hierarchical and decentralized decision making. You've got a widespread group of folks besides the guy giving orders.

We're also seeing other forms of social activity. Hundreds of thousands of young people in Brazil have a group called Blah! that they use to flirt with. You get a screen name, which protects your real identity. You get a profile, which describes who you are. And you can search for profiles and send them messages. They can reply to you through their handle or through their real identity, or they can block communications from you. It's almost entirely about flirting, and it's mostly young people, and it's popular—400,000 people joined it in the first three months it was in operation. They have face-to-face parties with people standing around texting each other, looking around to see if the people who are texting are the ones they're talking to.

So you've got flirting, you've got gaming, you've got riots, you've got elections, you've got political demonstrations. And these are just the first signs of collective action online. I'm not making a big claim about something that exists today. I'm pointing out some early indicators of what may be happening in a future in which millions of people have devices on them that are not just telephones but also computers connected to networks.

reason: In the book you compare smart-mob behavior to the swarm systems observed in ants and other insects.

Rheingold: You need to make an important distinction, in that swarm systems that have been studied in biology and in complex systems consist of relatively unintelligent actors. With humans, of course, we have intelligent actors.

With ants, you have very sophisticated decision making about where to locate the nest and where are the nearest, best sources of food and what are the routes. These are done not by individuals who make decisions with neurosystems but by the emergent decisions of a whole lot of individual actors.

You've seen recently—Steven Johnson wrote very nicely about it in his book *Emergence*—that this kind of behavior goes on in cities. Neighborhoods form not because people make conscious decisions about it but because of the emergent behavior of a lot of people who go to the same place for a certain kind of activity.

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The stock market, again, is another good example. The price of a stock is not decided by any one person but is an artifact of the aggregate transactions of large numbers of people.

I cite some interesting research with "toy markets" that shows that groups of people can make decisions in an emergent manner better than the individuals in the group. The Hollywood Stock Market is an example. People exchange symbolic money, buying and selling stock on what the box office receipts of Hollywood films that are soon to be released will be. And then the films are released; those stocks that have good box office go up and those that don't go down, so there are winners and losers. It turns out that those markets—those aggregate decisions of everyone who's making an investment—can actually predict what will be box office winners better than the individuals in those groups.

reason: The book is about not just smart mobs, but what happens when smart mobs collide with smart environments—what happens when mobility meets pervasiveness.

Rheingold: I think there are two aspects to smart environments. One is information embedded in places and things. The other is location awareness, so that devices we carry around know where we are. When you combine those two, you get a lot of possibilities.

You can associate information with places by putting, in those places, a device that broadcasts information to nearby devices. More practically, you could do it by simply using a server, so if your device knows where you are and it communicates with a server, you can ask about information that's stored about that place. So, for example, you might want to combine these two and point your device down the street and ask, "Is there a good Chinese restaurant in this direction?" Not just "What does Zagat say about it?" but "What do my friends say about it?"

Or, "I'm new in town. How do I get from where I am in relation to Fifth and Main? And what's the crime rate at Fifth and Main at this time of day?" Or, "I'm about to enter this restaurant. What do the people who've eaten here in the last hour say about the service here?" So there's a lot of information that can be associated with places. There's also questions about who has the right to write that information, as well as to access it.

Then there's the idea that individual objects will have some kind of ambient intelligence—that they'll have sensors in them that have information storage and communication capacity, and little radio circuits. We're now seeing the replacement of bar codes, beginning with the radio frequency ID tag. Gillette has just said it's going to buy a half billion of these. These are little microchips that are inexpensive, getting down to pennies or less than a penny, that you can put on an object. The chips will have information about that object, just as a bar code does, except you can write to this information and read from it using radio devices instead of relying on line of sight.

"The conflict over emerging technologies is whether we'll be active users who shape the medium, as we were with the Internet, or passive consumers who don't have influence over the medium, as we were in the days of one phone company."

You could, for example, using this technology, point to a book and find out what *The New York Times* says about it—and also what your book club says about it. You can do that with bar codes today: I reported an experiment on my blog where a friend of mine took a bar code reader and attached it to a hand-held computer. Every object has a story; it's just that citizens and consumers don't have access to what that story is. Soon we're going to have lots of little chips in lots of things, and those chips are going to communicate, and we're going to read information from those chips, and in some cases the chips can read information that we can send to them.

In not too many years, there will be more objects communicating via the Internet than people. We have an environment that's beginning to have ambient awareness. "Intelligent rooms" could have sensors that pick up information you broadcast so that they would know who you are, and what your credit rating is, and what your record with this particular store is.

There's also wearable computing, so that it's not the environment that has the ambient awareness but your clothing that can communicate with objects and the environment. So here we have a very complicated situation: Our clothing, the objects we carry, the devices we encounter, and the places we encounter,

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in the future, will have information associated with them and in some cases the ability to compute.

reason: A lot of this is still in the research stage. We're still talking about that pure model of how things are supposed to work, before you fall into the messiness of how things work in the real world. When I read your book, I kept imagining myself turning on my computerized glasses, looking at an object, and seeing a 404 Error floating in midair.

Rheingold: One of the quotes in the book is that a side effect of this kind of future might be that nothing works and nobody knows why.

It used to be that if your automobile broke, the teenager down the street with the wrench could fix it. Now you have to have sophisticated equipment that can deal with microchips. We're entering a world in which the complexity of the devices and the system of interconnecting devices is beyond our capability to easily understand.

reason: The book mentions Mark Pesce's idea of "techno-animism." And animism is one of the first things I think of when you describe this world where there are spirits in everything, and they're communicating with each other, and you have to go to an expert to mediate between you and them.

On the other hand, Pesce is worried that "widespread popular beliefs that computationally colonized objects are intelligent ...could lead to unpleasant unintended consequences." But a lot of people already react to recalcitrant objects as though they were intelligent. I yell at my car when it breaks down whether or not it has microchips in it.

Rheingold: I think this is qualitatively different. There's what used to be known as the "pathetic fallacy" of projecting human emotions onto objects. Here, the projection is facilitated by the object's calling you by name, knowing what the last thing you bought in the store was, knowing what your credit record is. When that happens, you quite naturally assume that it knows more than that. You don't know what it *doesn't* know about you, and therefore the room for that kind of projection is much more vast. It's not just an artifact of the human propensity to anthropomorphize things.

reason: You've pointed out that there are questions about who's going to write the information that's embedded in the environment—whether it will come from the top down or emerge from peer-to-peer communication. Do you think people would stand for any smart environment that tries to direct them instead of the other way around? The recent history of the Internet is a series of business models failing because companies thought they could channel people rather than just being there as tools for them.

Rheingold: There are naive notions of how to use these things in commerce. They're going to fail and get a backlash.

reason: Which of these technologies strike you as useful tools you'd like to have, and with which do you think you'd want to hit the off button as soon as you get a chance?

Rheingold: We already know that spam is a huge downside of online life. If we're going to be spammed on our telephones wherever we go, I think we're going to reject these devices. And it may be, like spam and telemarketing today, an annoyance in life that, no matter how much we personally hate it, our choices aren't going to make it disappear. So that's the hellish side of this.

"It's a pretty radical American idea: You don't have to rely on some distant institution, whether it's a government or a religion, to give you power and give meaning to your life if you have the tools and the knowledge and the freedom to do it for yourself."

I do think that giving consumers and citizens information about objects that they might want to purchase or interact with, and places they may want to patronize, gives us power and choice. If I can say, "The service in this place has been really shitty," and thus influence who's going to use it in the future, that's going to give me more power. If I'm able to look at the label of an object and choose whether to purchase it based on my political beliefs, that gives me and other consumers more power. With much of what I'm writing about, there's an upside and a downside, and it's hard to tell which ones are going to prevail. I think it's not *either/or* but *both/and*.

reason: To what extent do you use mobile devices yourself?

Rheingold: I'm not that much of a road warrior, but when I traveled publicizing the book, I carried a Handspring Treo that enables me to download and upload e-mail very easily and quickly to the Sprint network. And it was invaluable. I could get e-mail from a journalist

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who wanted an interview while I was in a taxicab from the airport and have the interview arranged by the time I got to the hotel. That was very useful to me. It definitely changed my life.

reason: Would you want to wear a computer?

Rheingold: It depends on how much control I have over it, and its price. But yeah, sure. I like to use my MP3 player, I like to use my mobile phone, and there are times when I want to send and receive e-mail on the run. If all that can be combined into something I can wear, then why not?

Again, it depends on how much control I have over it. I don't want to be called all the time—I want to be able to roll it over to voice mail if I need to. I definitely don't want to be spammed that I can get 25 cents off a burger every time I pass a McDonald's. A lot of it's going to depend on what the experience in the environment is of actually using it.

reason: And a lot of that depends on politics.

Rheingold: I think the overall conflict over emerging technologies is going to be whether we'll be active users who shape the medium, as we were with the personal computer and the Internet, or passive consumers who don't have influence over the medium, as we were in the days of three television networks and one telephone company. That's what a lot of these political conflicts over the regulation of new technologies are about.

Another aspect is that vested interests resist technologies that challenge their existing business model.

reason: One of the most interesting political battles you describe is the debate over wireless local area networks, or WiFi.

Rheingold: Telephone companies have paid governments around the world large amounts of money, upwards of $150 billion, for "3G" licenses, to create the "third generation" high-speed data networks to our devices. This is a big, top-down, very expensive infrastructure in which portions of the spectrum are auctioned off to the highest bidders, who have exclusive control of that part of the spectrum for their business purposes.

With WiFi technology, if you install a small card in your PC and another small base station from your Internet connection, you can project wireless Internet access to a small area. If a number of these, coming from the grassroots, link together, then you can have grassroots networks. So we've got broadband Internet access that doesn't rely on this 3G system. And it operates in the unlicensed band, so citizens don't need to have a license, like the 3G companies do, to operate.

So here we've got a conflict between a citizen-operated grassroots broadband system and a telco-operated top-down infrastructure, and the battle is being fought not on the level of technology but on the level of regulation. How is the FCC going to regulate the spectrum?

That is just one of several different emerging technologies that challenge the idea that spectrum should be regulated as property that is exclusively owned. This form of regulation is based on the kind of radio that we had in the 1920s. We now have radio that's much more intelligent in its devices than we had back then, and it's possible that we can treat the spectrum as a commons, as we have the Internet.

reason: What do you mean by a commons?

Rheingold: You don't have to buy a license to own a piece of the Internet. Anyone can send bits on the Internet. No one owns the whole thing. That doesn't mean that you can't have a capitalistic enterprise—it didn't stop Jerry Yang from becoming a billionaire or Google from becoming a billion-dollar business.

It's the difference between the highways and the railroads. You have to be a railroad company to run a train on a railroad, and the schedules are very, very closely coordinated from the top down so the trains don't run into each other. You don't have to own a highway to use it, and people determine how they get to their own destinations.

So part of the electromagnetic spectrum could be opened up to anyone who uses smart devices. The devices play nice with each other, the way routers do on the Internet—your transmitter will check and if this particular frequency is not being used for the next 50 billionths of a second by another device, it'll send its data out on it.

The open spectrum proposal is not that we change the way the entire spectrum is regulated, but that we open up more of the spectrum for experimentation with new devices that would treat it as a commons. So it would still be illegal to transmit on the television stations' frequencies, the emergency frequencies, and others.

reason: Another battleground you write about is privacy. What issues there are most important to you?

Rheingold: Well, nothing is more important than political

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liberty. If you don't have that, then the other issues are somewhat moot. Surveillance by people who want to sell you things is annoying. Surveillance by a state that wants to control your behavior is much more important.

People trade in their privacy for two things. One is convenience—it's convenient for Amazon to know things about my purchases, so it can recommend things to me. The other is security—when you go to an airport you submit yourself to a search, because you want to be secure from terrorism. Recently we've seen the state use technology to invade the privacy of citizens to a huge extent. People have accepted this, presumably because they think that they'll be more secure.

If encryption were easy to use and instantiated in devices, then people would have the opportunity to anonymize their transactions. There's definitely a user interface issue, because only the most sophisticated users are going to use anything that's complicated at all. If you had a privacy control that you can switch on and off, that would enable more users to take control.

reason: You also write about peer-to-peer journalism. One aspect you discuss more on your blog than in the book is this phenomenon of "moblogs."

Rheingold: Well, I predicted it in the book, but it hadn't happened yet. It's now happening so much that I'm considering not blogging it anymore.

reason: What's the difference between a moblog and an ordinary weblog?

Rheingold: A weblog is a site where anyone, from their computer, can post to the Web. A moblog is a mobile blog, so you can use your mobile device—a telephone, a video-equipped PDA [personal digital assistant]—to post to the Web. To publish what you witness and what you think from anywhere you are to everyone in the world—that's a big leap. Particularly now that we have the capability of publishing photos as well, and in some cases video.

The Rodney King video showed what happens when the cost of using a video camera drops to the point where you don't have to be a television professional to use one. Soon we'll see something happen in the world that's reported by one or more people from their mobile devices directly to the Internet before you see it on CNN or in *The New York Times*. Individuals have the ability to publicize events in a way that they have not had before, and that will ultimately affect the mass media, just as recently we saw the blogging about the Trent Lott affair having an effect on the political scene.

reason: A lot of the public seems to feel that after the dot-com crash, all technological change suddenly ended. Obviously, that isn't true. But to what extent is what you're writing about being restrained by recent developments in the marketplace?

Rheingold: It's important to note that the same thing happened with electricity and the railroads as well. There was a similar pattern: a world-changing discovery, and a lot of hype about it and utopian expectations and a financial bubble, and then a bust, with a lot of money being lost and a lot of businesses failing. And then, finally, some businesses picking up the pieces—not necessarily the ones that were the pioneers—and becoming very powerful. Ultimately, the changes *were* world-changing. So I think we can mistake the short-term events for the longer-term significance.

I think the financial losses in the high-tech and telecommunications and Internet sectors were so large that it's going to take several years to recover. But that does not mean that either technological progress or social innovation has stopped. Weblogging pretty much emerged as a social phenomenon *after* the Internet crash.

reason: A lot of people still associate the *Whole Earth Catalog* with the 1960s, even though the operation continues to this day. I was trying to think of ways that what you're writing about now is connected to what you were doing with *Whole Earth*, and the first thing that came to mind was the *Catalog*'s credo, "Access to Tools."

Rheingold: Yes. In fact, it goes back a lot further than the '60s. It goes back to Emerson and "Self-Reliance." It's a pretty radically American idea: You don't have to rely on some distant institution, whether it's a government or a religion, to give you power and give meaning to your life if you have the tools and the knowledge and the freedom to do it for yourself.

In the '60s, it was about not relying on the particular culture and government of that time. But the general idea is not relying on *any* particular culture and government, when you have the power to do it yourself. ▪

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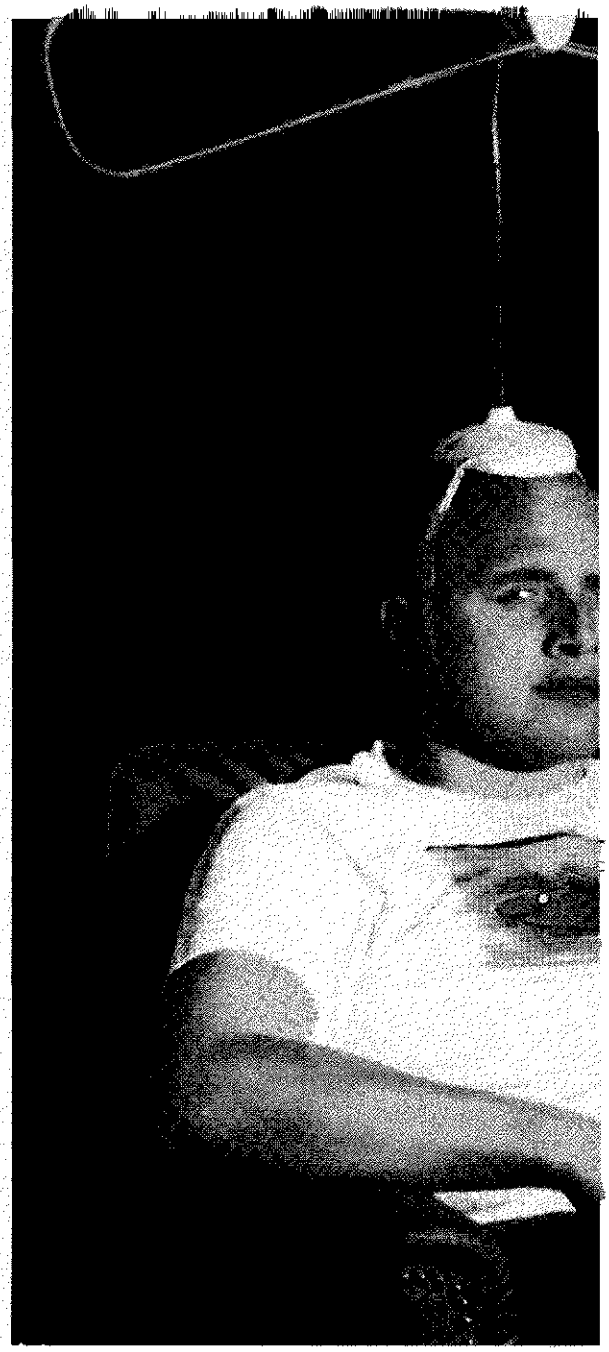
Prisoners of Digital Television

A misadventure in high-tech regulatory policy—and a Harry Potter Fix

Mike Godwin



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In *Harry Potter and the Prisoner of Azkaban*, the young student wizard Harry Potter is pursued by a horde of creatures called Dementors. To make a long, well-plotted story far too short, a future version of Harry suddenly appears and waves his magic wand, reciting the spell "Expecto Petronum!" Thus Future Harry manages to scare away the Dementors, protecting the Harry of the present.

The transition from analog broadcast television to digital broadcast television (DTV), now an enshrined part of American broadcasting policy, faces its own set of Dementors—a horde of technical, legal, economic, and social problems. Taken together, the problems look as unbeatable as any monster. Making things worse, many factions with a stake in the outcome are at war over such issues as technology mandates, copyright protection, and fair use.

But what if we could somehow look back from the future to today's troubled present debate, wave our wands, and magically defeat the problems that bedevil the DTV transition? Such magic is beyond us mere muggles (as Harry's fellow wizards disparage non-magical humans). But it *is* possible to look back from the future we have long been imagining—one in which various consumer electronics and information technologies have converged, and in which the broadband Internet reaches every home. From there, we can come up with our own version of a magical solution.

It's fair to ask why we even need a solution, other than letting our DTV industrial policy collapse under the weight of its own mistakes. The short answer is this: There's much more than digital television at stake. Bad government actions in this sphere—and you can be sure that Congress and the Federal Communications Commission will act rather than refrain from acting—could permanently shoehorn part or all of the computer revolution under government-driven design control. Not only would this likely kill the dynamism of the information-technology sector, but it is unlikely to do much to protect copyright interests. Worse, by slowing technical innovation, the Hollywood studios may end up shooting themselves in the foot, since digital innovations have both lowered production costs and let new features and effects be included in modern TV and movies. Since our government is dead-set on taking action, the question becomes one of helping our regula-

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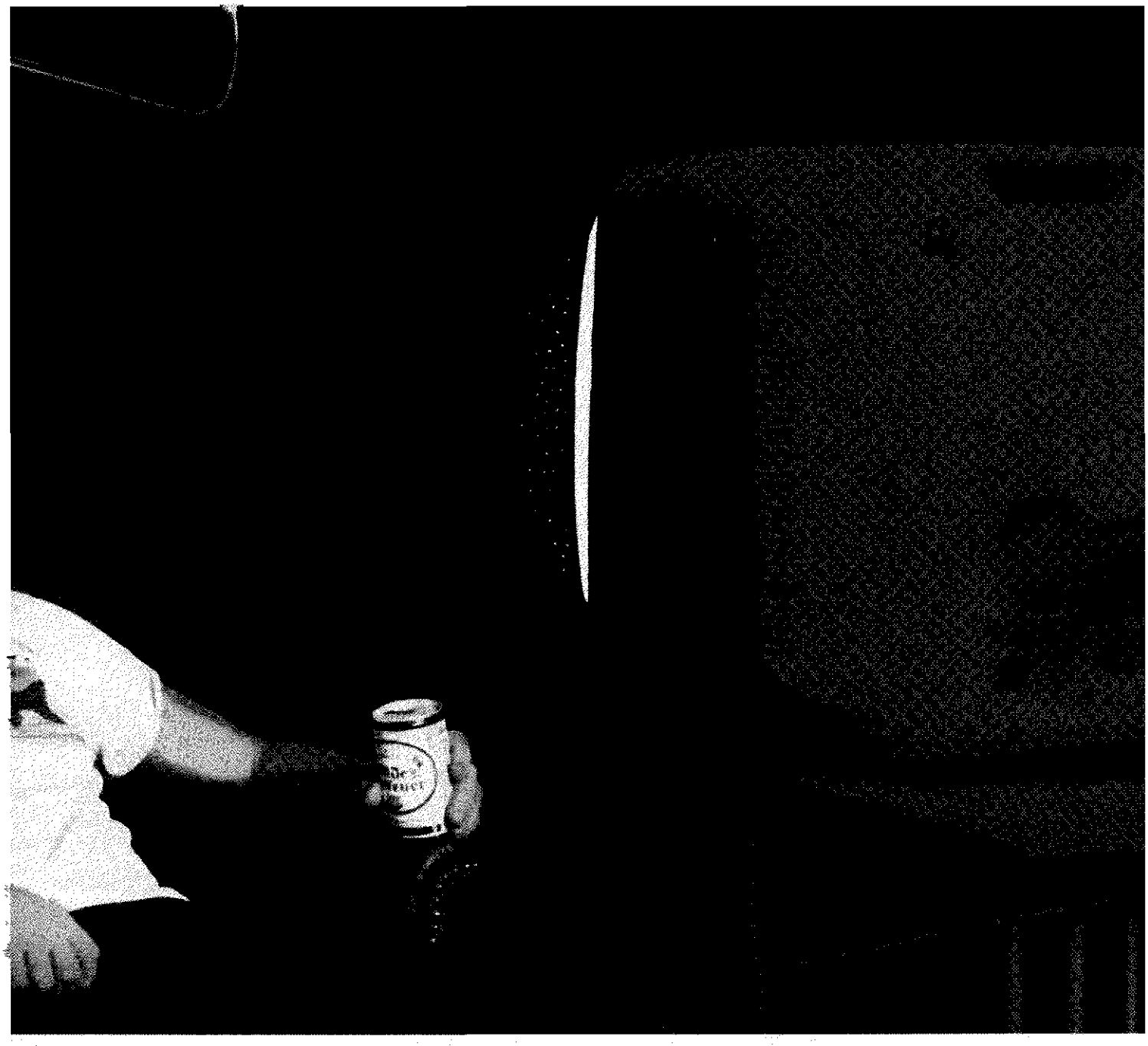

tory Harry Potters invoke the most innovation-friendly spell rather than (as might otherwise be preferable) giving up the magic of regulation altogether.

The Problems

Before we can outline a solution, we have to take a look at the problems. A list follows of the issues each set of stakeholders sees at the center of the transition to DTV. One might reasonably dispute some of the groups' assertions, but for the sake of argument I'll treat all their primary points as essentially valid. Even with that understanding, as we'll see, there may be a win-win solution for all the major players—especially consumers.

Problems for content companies. Motion picture studios, TV networks, and other companies that produce, publish, or distribute content worry that DTV will allow viewers to record high-quality content, then recirculate it through the Internet or other media, à la Napster. Such copying could undermine the revenue potential of high-quality content, which otherwise could be resold to local broadcasters through syndication or repackaged as VHS tapes and DVDs for sale or rental.

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Peer-to-peer file trading did not begin with Napster. It is, in a deep sense, a part of the Internet's fundamental design. The Net was *created* so computers could share data.

One proposed fix, widely advocated within the content industries, is to "mark" all commercial content that needs to be controlled—perhaps with a broadcast flag (a string of bits contained in the digital broadcasting stream) or perhaps with watermark technology (a hidden mark designed to survive digital-to-analog conversions, as well as the conversions of content that occur routinely in computers and consumer electronics).

Such marking solutions, however, produce another set of problems. To look for the marks, an unprecedentedly broad range of technologies would be required. Plus, the government would have to standardize the marking technologies. And broad sectors of the information technology, consumer electronics, and communications fields would have to be radically rebuilt. Some industrial sectors—especially those that produce niche digital-manipulation devices (such as Formac, whose product line converts TV to digital video and back again) or personal video recorder systems (such as TiVo)—might be wiped out by the cost of the redesign and by limits on developing new products.

Without government regulation and oversight, the marking approach can't work. Unless it's required by law, electronics manufacturers would have little incentive to encumber digital devices with the necessary features. Import regulations would be needed to prevent entry of noncompliant devices. And we might need new regulatory controls over analog-to-digital and digital-to-analog recording technologies. Such devices are currently ubiquitous and cheap, but because they may ignore or even strip out the marks placed in digital content, they form part of what the content industry calls "the analog hole"—their unsightly term for analog devices' tendency to ignore or sidestep digitally based protections, thus creating a gap through which protected digital content can leak.

Control of analog-to-digital or digital-to-analog technologies may make them more expensive and less functional. Worse, it may add hidden, unanticipated costs to devices not traditionally considered within the FCC's jurisdiction, such as astronomical observation tools and certain types of medical monitors. And don't forget your cell phone, whose cheap microphone takes the analog waveforms of your voice and digitizes them for transmission.

Needless to say, the marking-plus-regulation solution puts the content sector at odds with other industries and with consumers. This has led to trench warfare in the legislature, in the courts, and in public opinion, with each side throwing all its resources into gaining a few feet here (as with the battles over the broadcast flag) or blocking an enemy's advance there (as with the effective killing of Sen. Fritz Holling's (D-S.C.) omnibus copyright-protection legislation, which first brought the struggle between the Hollywood studios and the tech companies into the public eye).

Problems for hardware, software, and Internet companies. Many segments of these industries are also facing flattening sales. The sector as a whole is acutely aware that customers will reject new products that may be more limited than older ones in how they deal with both commercial and user-generated content. The computer and software industries in particular take it as a given that consumers expect more and better functionality and faster processing speeds. They don't want to hear these sorts of complaints: "Every second my computer spends checking whether I'm making an unauthorized copy is a cycle it isn't using on my work!...Why can't I move digital video I made myself back and forth between my computer and my digital video camera?...This

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computer takes longer to load media files than my old one did!"

Worse yet, the content industry's proposal has to make many classes of hardware and software "untamperable"—that is, difficult to modify, or "closed." Yet open platforms such as the PC and the Internet have by their very openness encouraged innovation. The results include the Internet as we now know it, the World Wide Web, Linux and other open source software, and graphical browsers. Interestingly, rapid development in this sector has also produced technologies that make filmmaking, music recording, and other forms of content generation much cheaper and more accessible than they used to be.

The Linux problem is particularly acute, as Linux-based operating systems are among the few serious competitors to Microsoft remaining in the operating system market. Linux programs are distributed with their "source code" or simply distributed *as* source code, which means that they're inherently open and tamperable. A regulatory requirement that Linux-based media players be untamperable would in effect outlaw Linux versions of such products.

Fine, you say: Then the law should recognize the competitive value of open source software and carve out an exception from the untamperability requirement. But that wouldn't just be a big hole in the content-protecting regulatory scheme. It would actually put proprietary software companies at a disadvantage in competing with Linux in the media player market, since Linux-based players could be modified by any programmer to add functionality or remove content protections. In effect, the "untamperability" requirement creates a dilemma—either permanently hobble open source software (and perhaps lock in Microsoft's current market dominance), or permanently disadvantage proprietary software, including Microsoft's (and thus promote Linux as a matter of industrial policy).

For Internet companies, any regulatory obligation to monitor for copyrighted content signifies a substantial redesign of the Net as it has existed and grown since its beginnings more than three decades ago. Peer-to-peer file trading did not begin with Napster. It is, in a deep sense, a part of the Internet's fundamental design. The Net was *created* so computers could share data and other resources on a distributed, decentralized network. Digital music files are just another kind of data.

Furthermore, making copies is a fundamental part of what each computer does. It copies information from one part of memory to another, from memory to hard drive and back again, from memory to video, and so on. The Internet, too, works by copying—transmitted data are typically divided into "packets," which are then copied and recopied from computer to computer until reproductions of all the packets reach the destination computer and are reunited into a perfect copy of the transmitted information.

Problems for Congress. For a number of policy reasons —the perceived benefit to the public, a purportedly more efficient use of the spectrum, higher-quality broadcasts —Congress has required television broadcasters to move from analog to digital transmissions. It established the year 2006 as a nominal deadline for the shift, assuming that the general public would see the value of DTV and buy new television sets, with digital tuners, to take advantage of these features. In effect, Congress "loaned" broadcasters extra spectrum to develop DTV (and the DTV audience), but the loan has not produced the expected consumer buy-in.

Making things still more problematic, Congress based its tax and budgeting decisions for the next few years on the assumption that the original "analog spectrum" would be returned. It could then be used for public service purposes (public safety, a larger unlicensed band) or auctioned off, with the latter plan generating perhaps tens of billions of dollars for the government.

As we approach the deadline, the increasingly evident lack of significant consumer purchases of (relatively expensive) DTV receivers means Congress faces the prospect of telling voters that their analog TVs—including the big new ones they buy just this year, or next year, or in 2005—will either be wholly obsolete or require a converter box to keep working. There is no serious doubt that voters will be unhappy about having to buy new, more expensive TVs, or somewhat less expensive adapter boxes, just because Congress has said they must. (An unfortunate side effect of the converter interim solution is that, by adapting legacy devices to receive digital broadcasts, the government may in effect be equipping home-entertainment equipment to facilitate the very "analog hole" infringement that troubles content companies.)

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Congress could, of course, push back the spectrum give-back deadline. Broadcasters may also be able to use a loophole in the original deal to push it back themselves. But this would throw off budget and tax calculations and force a revenue shortfall, which in turn would force Congress to make other hard decisions that also may irritate or disappoint voters.

Problems for consumer electronics companies. Quite rationally, the consumer electronics sector likes selling high-margin, high-quality, high-resolution TV display devices. It also knows that just about all of its current customer base for such devices gets its content from cable, satellite, or DVD, and scarcely ever from over-the-air digital broadcasting.

Tuner mandates, such as the FCC's recent requirement that all high-definition televisions (HDTVs) carry both analog and digital TV-signal receivers, mean an added expense per unit at a time when the industry is hoping economies of scale will reduce their costs and get more buyers into stores for crisper, even "cinema-quality," TV displays. Consumer electronics companies now have an incentive to move entirely into the computer-monitor business and abandon selling "TV sets" (monitors plus tuners) altogether. This would allow them to escape the tuner mandates and continue to sell high-quality visual displays that would function equally well on computers or as part of home entertainment systems—attached, for example, to cable set-top boxes.

Meanwhile, one looming problem has not even begun to be addressed: In-the-field tests of television sets equipped with digital tuners suggest that DTV reception—at least under the technical standard digital broadcasters are currently required to use, dubbed 8VSB—is not as reliable as analog broadcast reception. In other words, the FCC is requiring manufacturers to add digital tuners that, while spiffy on the rare occasions that they do work, are nowhere near as reliable as plain old analog TV receivers. This is not the kind of policy that inspires people to buy consumer electronics.

Problems for broadcasters. Broadcasters aren't pleased that digital transmissions are less reliably received than analog broadcasts. Nor are they happy that the bill for "loaned" spectrum will soon come due, especially given most Americans' unwillingness to buy DTV products. If the transition is imposed on the scheduled date, there will be an abrupt decline in the advertising audience base for their broadcasts—especially when compared to those of cable and satellite.

Furthermore, the generally high costs of refitting broadcasting plants to enable DTV transmissions are, for many stations, an unfunded mandate—expenses that they are required by law to make as licensees (and may already have begun to make) but that do not translate (or haven't yet translated) into additional revenue.

Historically, one argument for the transition to DTV has been to enable broadcasters to compete against the heretofore more reliable signal quality of cable- and satellite-delivered TV content. It would be ironic if a policy designed to preserve free broadcast TV were in fact to hasten its end.

Problems for consumers. By voting with their wallets, most consumers have demonstrated that they do not yet value DTV's benefits enough to invest seriously in new equipment for it. Consumers who rely primarily on over-the-air broadcast signals may find that their new digital TV sets receive broadcast content less reliably than their old analog sets did. This federally compelled downgrade in reception reliability will likely make a significant number of broadcast-reliant voters unhappy.

In addition, efforts to control analog input-output interfaces, recorders, and display devices, in order to ensure the effectiveness of some marking schemes, may spell the end of plug-and-play interoperability among consumer electronics devices—a convenience that every Radio Shack or Sears customer has come to expect.

The Harry Potter Fix

Is it possible to create a compromise that addresses the concerns of all these groups? Politically speaking, it might not be. As a matter of public policy, though, it might. I lay out that compromise here, but first, a warning and a request: *Please don't hate me for suggesting that the FCC impose a new set of regulations when, in fact, we'd probably be better off if it sat this one out.* I'm no fan of the commission, and remain appropriately skeptical of its expansive role in regulating broadcasting. But the fact is that the FCC is under immense pressure from Congress to further the DTV transition. It will almost certainly choose to act, and whatever it chooses to do will probably

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The FCC is requiring manufacturers to add digital tuners that, while spiffy on the rare occasions that they do work, are nowhere near as reliable as plain old analog TV receivers.

be big. If we can't stop the commission from acting at all, we should help it find a plan that, at worst, does no harm. At best—if the stars line up and we hold our mouths just right—it might actually solve the DTV problem with minimal costs to the rest of the us.

The Harry Potter fix begins with three basic steps.

First, Congress would keep its 2006 deadline for the return of extra spectrum but allow broadcasters to choose which spectrum they return. They could keep their old analog spectrum or their new digital spectrum, but they'd have to give back one or the other. (This step assumes for the sake of simplicity that spectrum is fungible. The actual implementation of the giveback will be somewhat more complicated due to technical allocation issues, but compared to the regulatory problems of the current state of affairs it would be relatively straightforward.)

Second, TV stations could continue analog broadcasting if they wished. Those that wanted to continue analog broadcasting but continue to build out to, or experiment with, digital broadcasting could choose to buy or license additional spectrum, more of which should be available once the "loaned" spectrum has been reclaimed by the Commission, acting as a proxy for the general public. Furthermore, broadcasters who continue to transmit digital signals would be allowed to choose between the 8VSB standard and any other standard that might work more effectively (e.g., the COFDM standard now prevalent in Europe).

Third, the FCC would require all national networks, as a condition of continuing to hold their licenses, to transmit their prime time and late-night programming via the Internet. Local broadcast licensees likewise would be required to Netcast their locally generated programming.

"Wait a minute," you may shout at this suggestion. Internet distribution of licensed creative content? Won't that worry copyright holders? Aren't such worries the very motivation for the technology mandates they keep proposing?

Sure they are. That's why the FCC must also allow content companies to insist that delivery of licensed content be done through one or more secure digital multimedia systems, such as RealPlayer, QuickTime Streaming Video, Windows Media Player, or various Palladium-based schemes soon to be deployed. All of these systems, plus a number of others, offer reasonably secure delivery that prevents all but the most determined viewers from making unauthorized copies of content. They are not entirely hack-proof, but that is also true (indeed, much more true) of the proposed marking schemes. In purely practical terms, they already offer more protection than such schemes, not least because they are less costly to implement. Of course, broadcasters may choose to deliver some of their own content in the clear, and there may be occasions when copyright holders want to authorize or even encourage broadcasters to deliver some of their content in that manner.

What are the advantages to this three-part plan?

First and foremost, it takes advantage of market forces that are already in play. Consider the advantage to content companies in the secure-delivery-system requirement. Market competition already exists in this sector, and there are several major players, including Real Networks, Microsoft, and Apple. Market-driven solutions can evolve more rapidly and respond more quickly to new copyright security problems than any government-imposed standard can. For antitrust reasons, the FCC would not want a regulation that let content licensors dictate which one of the competing systems must be used—that would permit them to leverage

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Imagine that instead of waiting until Thursday night to see the new episode of *Friends*, you could click on the *Friends* Web link anytime you wanted during the week the current episode was showing.

their copyright interests into control over commerce in areas outside of their copyrights. It would nevertheless be possible for the FCC to allow content creators to insist that licensees select a system that meets specified technology-neutral minimum security standards.

Another advantage: Secure Internet delivery of high-quality content would expose more Americans to the quality of high-definition TV and other digital offerings. Recent statistics suggest that about 70 percent of American households have personal computers—about the same share that has cable. Current PC monitors, including analog ones, are excellent DTV display devices. DTV-Internet offerings may spur demand for even better technologies.

It's true that even the fastest home broadband connections require many hours of download time to deliver digital television. Content companies typically acknowledge that their marking proposals are *anticipatory* measures. That is, they are addressing not a current problem but a *prospective* problem they believe will appear when Internet bandwidth is expanded.

But we also know that, for infringers at least, waiting hours for downloads to complete has not been considered a serious problem, even on the current Internet. In addition, it is widely believed (although hotly disputed by many telecom observers) that Internet bandwidth to the home will continue to increase over the coming years. Many early Napster users waited a long time for MP3 files to complete their downloading over 56-kilobyte modem connections. The same is now true for those who download movie and television files via broadband.

This points to a larger development: Live delivery of television is increasingly unimportant to Americans, a fact that helps explain the widespread use of VCRs, TiVo, and other devices for time shifting. Current Internet bandwidth rarely if ever supports *live* high-definition TV. But we may reasonably assume that a jumpstarted demand for broadband-delivered digital television will fund the kind of infrastructure build-out required to enable quick or even real-time high-definition TV delivery. And since the FCC is concerned with promoting high-definition TV *broadcasting* we may note here that consumers who've found that their appetites have been whetted for high-definition TV, and who want it faster than the Internet can deliver it, have an obvious solution that also fulfills the Commission's mandate. To wit, they can buy an high-definition TV set and (assuming broadcasters iron out those pesky 8VSB transmission problems) get their must-see TV *live*, 24 hours a day, from over-the-air broadcasting sources.

Meanwhile, nonsimultaneous delivery of premium content may constitute a new application for pure peer-to-peer distribution. (It would be a great irony if the Internet's peer-to-peer functionality, once regarded as an unmitigated problem, could be harnessed to enhance the delivery of commercial content in ways that financially benefit content producers even as they increase consumer choice.)

And if it doesn't work out that way—well, then the point is moot. If there is not enough bandwidth to allow a legal market in high-definition TV content, it follows that there isn't enough bandwidth to allow substantial piracy of it either.

Other Beneficiaries

The consumer electronics sector would also benefit: It would still get to sell high-quality computer monitors (essentially TVs without tuners) and might sell many more as audiences discov-

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ered alternative ways to access high-definition DTV content.

The information technology sector, remaining unencumbered by the government's technology mandates, would get to compete to develop secure content delivery systems. Provided the choice of secure delivery systems is left to the broadcaster, competition alone ought to be enough incentive for continuous innovation in these delivery components, driving down price while improving ease of use, quantity of features, and quality of playback. (It's instructive, in this connection, that consumer feedback about copy protection schemes revolutionized the software industry in the 1980s. The result was that most commercial software companies either abandoned copy protection or developed protection schemes, such as registration, that were less onerous for ordinary users.)

Broadcasters would be able to approach the shift to digital with a lot more flexibility. Local broadcasters in particular would gain. Not only would they be able to preserve their existing geographically based audiences (by not requiring them to abandon their old TVs and buy more expensive ones), but they would be able to reach new audiences around the world. Diversity of programming would be advanced, since an innovative local program would have the potential to reach a national or international audience. (This has already been the experience of radio stations that have echoed their programming to the Internet.) And reaching that larger audience would mean more advertising dollars for the station.

Consumers, too, would benefit, and not just because they wouldn't have to junk old TVs. They could still do fair-use time shifting (and other legal but unlicensed uses of commercial content) with their VCRs, TVs, TiVos, ReplayTVs, eyeTVs, WinTVs, and other digital and analog devices, including PC capture devices, as long as there was continued analog distribution. Perhaps more important, market competition among secure delivery systems might begin to offer similar fair-use features in the purely digital arena as well, especially once we've refueled the market for competition in the delivery-system sector.

Meanwhile, broadcasters could experiment with offering "must-see" TV at times convenient to audiences, or more than once. As far as the TV viewer is concerned, there would be an immediate improvement in convenience: Instead of waiting until Thursday night to see the new episode of *Friends*, you could click on the *Friends* Web link anytime you wanted during the week the current episode was showing.

That, of course, is just one possibility—lots of experiments would be possible. Another approach would be to give viewers a choice between "free" (that is, advertising-supported) prime time content and subscription-based, ad-free versions of the same programming. In other words, a viewer could choose to treat a network more like NBC or more like HBO. Perhaps you even could choose on Monday night to receive *Friends* on Wednesday. Since live broadcasting is increasingly unimportant to many TV viewers, your advance choice would allow the program to be buffered either in your system or in nearby servers, to be displayed on command. Such choices might matter more to viewers than any high-quality images.

And Congress? In a nutshell, it would be able to promote a transition to DTV without imposing any new expenses on TV consumers or imperiling "free" broadcasting. In fact, it would offer an expanded set of models for how free broadcasting can profitably work. It would get its "loaned" spectrum back and would be able to auction most of it off, consistent with budgetary plans, while reallocating portions of the spectrum for public use.

In short, every major stakeholder bloc would benefit, and consumers would be inconvenienced minimally, if at all.

Harry's wand-waving plan could work, and there may be other plans that do even better. But we'll only be able to weigh these alternatives if we set ourselves free to find alternatives to the current deadlocks, and resolve to avoid policy solutions that are worse than the problems. Both Congress and the FCC have been known to rival even J.K. Rowling in keeping us frustrated while we wait to find out how the story turns out. Let's hope we don't have to wait until 2006 for the next installment. And let's insist on a happy ending. ▪

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The Killer Fog

When green politics masquerades as environmental science

Todd Seavey

When Smoke Ran Like Water: Tales of Environmental Deception and the Battle Against Pollution, by Devra Lee Davis, New York: Basic Books, 336 pages, $26

FACTS MUST COME before philosophy. The question of whether air pollution quietly kills millions of people has to be decided by examining the evidence, not by checking that claim against one's political principles, be they environmentalist, pro-market, or something else.

In the first half of *When Smoke Ran Like Water*, Devra Lee Davis, an epidemiologist and public policy professor at Carnegie Mellon University, goes to great lengths to demonstrate her credibility by examining data, describing clear-cut environmental catastrophes, and giving readers useful lessons in epidemiology along the way. Somewhere around the middle of the book, though, a strange thing happens, and even a sympathetic reader must begin to doubt Davis' scientific objectivity. As is all too often the case with the environmental movement Davis represents, the data quietly fade into the background, their dire implications often taken for granted, while moving anecdotes and denunciations of political foes take center stage.

In the first part of the book, Davis recounts the disaster that befell her childhood home, the small steelmaking town of Donora, Pennsylvania. The town's mills constantly gave off chemical fumes, which most citizens accepted as a necessary byproduct of their livelihoods. In October 1948, a dense blanket of cold air and fog settled over the valley in which Donora was nestled. Fumes from factory smokestacks could not escape, and the haze of pollution became so dense that visibility was limited and doctors advised the infirm to get out of the valley. An unusual number of illnesses occurred among those who remained, and some 18 people died in a 24-hour period.

Davis notes similar tragic incidents in Liège, Belgium, in 1930, where a "killer fog" trapped heavy pollution and killed dozens, and in London in 1952, while debate still raged over the exact cause of the events in Donora. Her account is a sobering reminder that air pollution was once the industrialized world's chief environmental problem and that it remains a serious dilemma in the developing world. While today's environmental debates in the developed world typically concern hard-to-detect chemicals and subtle or hypothetical health effects, a century ago in London one could see the pollution, thick and brown in the air, and feel it in the lungs. Even today, in places such as New Delhi, just stepping outside can induce coughing in newcomers.

Davis carefully explains how epidemiologists go about determining whether pollution during extraordinary incidents such as the killer fogs in Donora and Liège can be fatal. They compare normal death rates for cities of those sizes to the elevated death rates during the fogs. This, she suggests, is the dispassionate, rational business of scientific inquiry in which she and other public health experts are engaged.

From the opening pages, however, Davis plants the seeds of another, more emotive line of argument. She clearly wants the reader to fear that mass death caused by pollution may be going on all around us on a regular basis, not just in the past and not just during periods of exceptionally high pollution—and she wants that fear to haunt us whether or not the hard numbers exist to prove that the fear is warranted.

She describes the tragedy in Donora with understandable passion, and she expresses frustration over the fact that it is so difficult to get a solid count of the victims in such cases, given the stealthy nature of pollution and the subtlety of the statistical evidence. At the same time that she extols the virtues of hard data, she

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suggests that the above-average rate of heart disease in her own family was caused by the pollution of Donora—something she admits she couldn't even get her own mother to believe: "Uncle Jack, Aunt Ruth, Aunt Gert, and my mom...all developed some form of cardiovascular ailment." This is related with great emotional force, but it is anecdotal reasoning, not epidemiology.

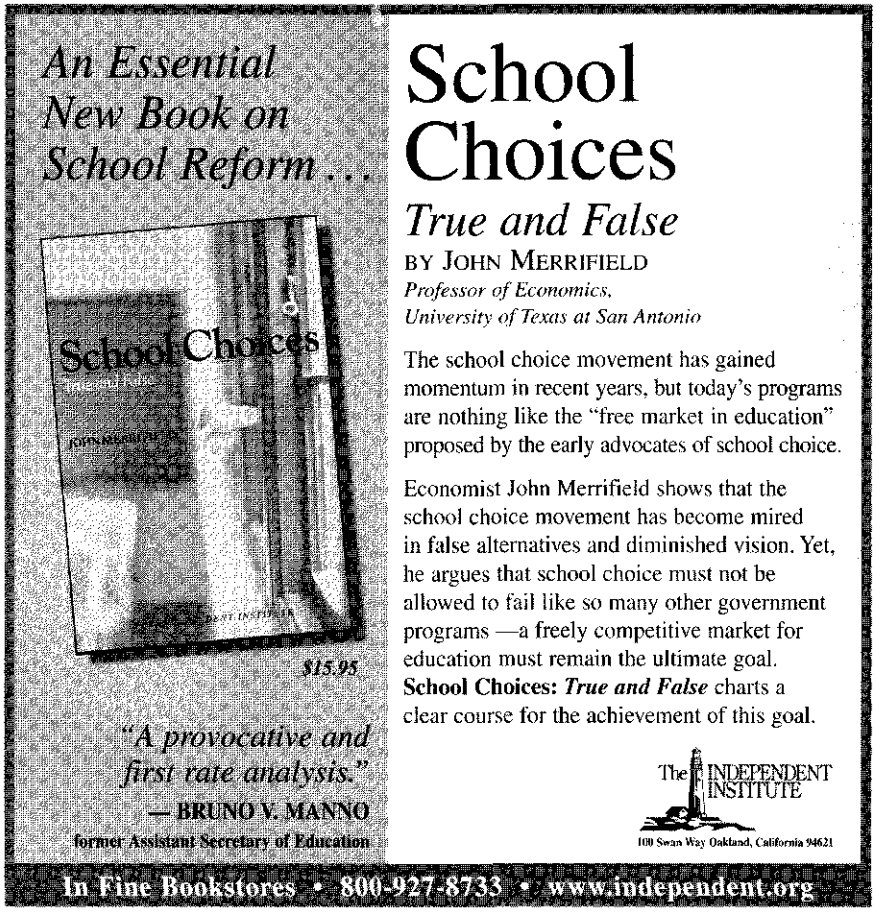
Davis' anecdotes are not confined to Donora. Her Uncle Len died of a heart attack years after leaving Donora, on a smoggy day in Los Angeles in 1969. Did he die because of L.A.'s then-legendary air pollution? We do not know—and neither does Davis, as she briefly acknowledges. Yet all but the most careful readers will be left with the impression that he died from smog and that many others have as well. Davis describes Uncle Len's athleticism at great length, hinting that such a strong man could not simply drop dead of a heart attack. "'Heart attack' is what his death certificate said," she writes. "That is what thousands upon thousands of death certificates said for folks who happened to succumb at times of high pollution."

As if the tragedies of Donora and Uncle Len were not enough to put us in the right frame of mind, Davis tells us about friends and relatives who survived the Holocaust, noting that the exact numbers of those killed by the Nazis will never be known. Davis claims that she is not suggesting any parallel between those murdered and forgotten during the Holocaust and those whose deaths due to pollution are overlooked today, but she pointedly strikes one of the most powerful emotional chords in the modern psyche. She uses a similar tactic in the Donora narrative, where she expresses frustration over the fact that the "killer smog" victims, upon autopsy, had healthy, clean-looking lungs—and then notes that the same was true of poison gas victims during World War I.

By noting the uncounted dead—and by lamenting that Uncle Len's cause of death cannot be stated with certainty—Davis turns her lack of hard numbers, which by epidemiological standards would be considered a weakness, into a rhetorical asset. Not only is pollution a crime, the reader is led to feel, but it is a crime that dishonors its victims by leaving no clear record of their manner of death. Like extraterrestrial visitors or God, fatal pollution is made to seem all the more ominous and powerful precisely because it is undetected.

Davis' rhetorical flourishes and innuendo would be forgivable if they were merely used to set the stage for hard data about the ongoing toll of air pollution. But when she discusses pollution from around 1970 and since, her narrative undergoes a shift. We hear more tales of struggles between activists and industry than explanations of epidemiological research. There are few of the numbers, graphs, and scientific experiments one might have anticipated from reading her earlier capsule lessons in how to do hard science.

Instead, the floodgates of politics are opened. We are suddenly treated to Davis' stories of working with U.S. Rep. Bella Abzug (D-N.Y.), who was convinced that the high rates of breast cancer on Long Island must have an environmental, probably corporate, cause. A recent National Cancer Institute study concluded that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Economist John Merrifield shows that the school choice movement has become mired in false alternatives and diminished vision. Yet, he argues that school choice must not be allowed to fail like so many other government programs —a freely competitive market for education must remain the ultimate goal. School Choices: True and False charts a clear course for the achievement of this goal.
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women on Long Island were not exposed to chemicals at an abnormal rate, suggesting that genetic or other demographic factors might explain the very slight elevation in breast cancer rates there. But Davis dismisses this report as "unproductive" and "bogged down" in bureaucracy. Instead of painstakingly explaining where the study went wrong, Davis gives us an extended description of Abzug's own struggle with breast cancer.

We are also told that polychlorinated biphenyls (PCBs), chemicals formerly used in flame retardants and electrical insulation that still linger in the environment, are taking a terrible toll on human health. Davis claims that hermaphroditism in polar bears and alligators shows that PCBs and various man-made "environmental estrogens" account for reduced human sperm counts and may threaten the future of the human race. Even if Davis is right in suspecting that estrogen-mimicking chemicals can affect human hormones, the actual demographic numbers of boy births vs. girl births hardly suggest a crisis: From a 1970 ratio of about 106.5 boys per 100 girls, she tells us, we have plummeted to...105.2 boys per 100 girls. Serious crisis, minor shift, or chance variation? Davis thinks it's the former, but she doesn't make a case for that view.

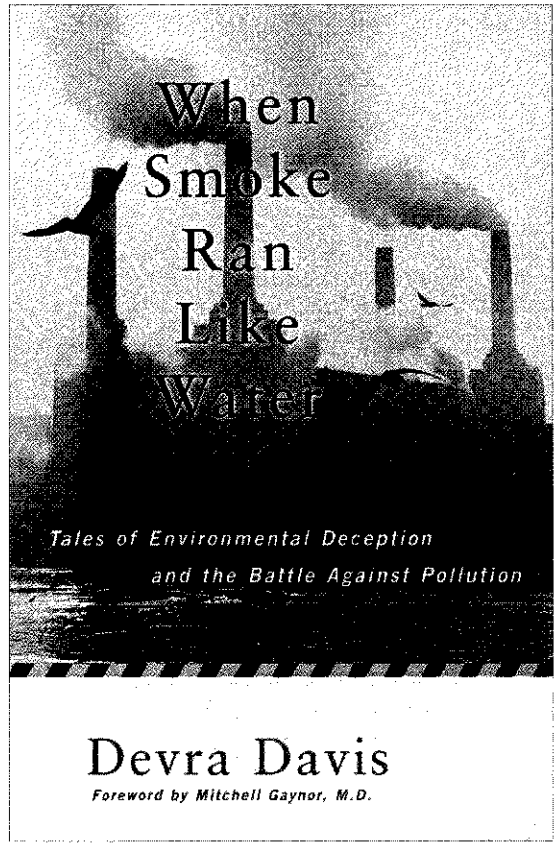
Throughout her description of this and other pseudo-crises, we are repeatedly asked to see regulators who act before the data are in as courageous figures. In her estimation, they are unwilling to sit idly by while tragedy strikes. Davis praises science one moment and the next moment praises those unwilling to "wait" for science's answers.

In a way, this shift in Davis' tone is fitting: It reflects a real change in the environmental movement during the last 30 years. The problem of severe air pollution has been diminishing in the industrialized world, and that change has sent environmentalists in pursuit of more nebulous threats. Groups such as Greenpeace, which once addressed problems visible to the naked eye—smoggy air, garbage-filled rivers—now warn of minuscule or hypothetical risks from industrial chemicals or biotechnology.

Some parts of the developing world, such as Mexico City and China, face increasing levels of pollution, as Davis documents. Air quality has become measurably worse in some places as industrial activity has increased and population has grown denser—but it should not be inferred from this trend that our own pollution problems are getting worse.

Why has air pollution lessened in the developed world? The past few decades have seen a combination of cleaner technologies and regulations that have limited emissions from factories, cars, and other sources. Whether the regulations that helped create those improvements should have been more market-based is open to debate. (Indeed, that debate was reopened in November, when the Bush administration rolled back some parts of the Clean Air Act, allowing companies and local governments greater flexibility in choosing the most efficient means of reaching pollution-reduction goals.) There is little question, though, that when people become wealthy enough to turn their attention to subtle problems like pollution (instead of more immediate ones like starvation), they do so, and the developing world will no doubt follow the same pattern in short order.

Pollution is, among other things, a violation of property rights and bodily integrity; one need not sign on to a radical green agenda to object to it. One ought, however, to avoid extrapolating from the environmental movement's past victories to the conclusion that today's vaguer, more dubious threats are producing a hidden body count as great as the one produced in decades past. Furthermore, one should avoid depicting those who doubt such threats as stubborn, obstructionist tools of industry. But Davis


When Smoke Ran Like Water
Tales of Environmental Deception and the Battle Against Pollution
Devra Davis
Foreword by Mitchell Gaynor, M.D.

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remembers how reluctant Donora's mill owners were to shut down during the "killer fog," and she repeatedly implies that her intellectual opponents in more recent decades are equally obtuse and malevolent.

In the interest of full disclosure, I should note that one writer she attacks (for his criticism of recent air pollution epidemiology) is Joel Schwartz, who has done work for both the Web site I edit, HealthFactsAndFears.com, and the Reason Public Policy Institute, a think tank operated by the foundation that publishes this magazine. Davis says Schwartz and all such critics of environmentalism are playing "public relations games" and "hindering legitimate science." Again and again, when the work of Davis and her allies is questioned, she simply dismisses her opponents as industry mouthpieces. Any link to industry, no matter how indirect, is sufficient to call into question the objectivity of scientists and commentators who doubt Davis.

Apparently, though, no bias is created by growing up in a town where numerous people reportedly were killed by industrial pollution; believing that several members of your own family have heart disease because of that pollution; grieving for your beloved Uncle Len's death in the L.A. smog; or being on friendly terms with people like the alternative medicine guru Mitchell Gaynor. In the foreword to Davis' book, Gaynor assures readers that her fears about pollution—and his own—are based on "abundant evidence" and "voluminous scientific literature." Perhaps, but it is worth noting that Gaynor also believes in using noise-making "Tibetan singing bowls" to combat cancer.

> Like extraterrestrial visitors or God, fatal pollution is made to seem all the more ominous and powerful precisely because it is undetected.

Davis goes to great lengths to describe her more orthodox views on epidemiological methodology with textbook clarity, but when it comes to more controversial matters—precisely when we most need her to be clear and forceful—she glides quickly over her opponents' objections, pausing only to describe them as flacks for polluting companies. So you will learn nothing here about whether high-dose animal experiments really are good predictors of human health effects, or whether there are minimum doses of pollution (as with most poisons) below which we need not fear health effects. On such questions, Davis in effect asks us to trust her intuitions, intuitions shaped by her own unusual experiences and strongly held beliefs.

Even Davis' concluding anecdote, metaphorical and inconsequential though it is, calls her accuracy into question. After noting that she is now involved in a group that seeks to combine religious life with environmental concerns, Davis tells us that she heard a traditional Midrash fable in childhood, a fable that she now sees as a metaphor for her struggle against pollution.

In the original story, she says, a female rabbi is rescuing starfish on the beach by throwing them back into the water. A little boy tells her that her efforts cannot make a difference because the beach will be covered with starfish again the next day. The rabbi tosses another starfish out to sea and says, "Made a difference to that one."

Cute, noble, defiant. A great little story. But since the first female rabbi in the United States was not ordained until 1972, how plausible is it that a girl growing up in the 1950s would have heard a Midrash story featuring one? I do not ask out of a desire to defend patriarchal religious traditions. I ask because it is one of those nagging little details that leave the reader wondering whether Devra Lee Davis is as sure of her facts as she is of her mission. ▯

Todd Seavey edits HealthFactsAndFears.com, a webzine published by the American Council on Science and Health. He is writing a book titled Conservatism for Punks.

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Command Performances

The civilian-military conflict over the conduct of war

Michael Young

Supreme Command: Soldiers, Statesmen, and Leadership in Wartime, by Eliot A. Cohen, New York: Free Press, 288 pages, $25

"Good morning, good morning!" the General said,
When we met him last week on our way to the line.
Now the soldiers he smiled at are most of 'em dead,
And we're cursing his staff for incompetent swine.

Thus begins Siegfried Sassoon's seething 1917 poem "The General," on the bungling bloodletters commanding the British army during World War I.

"He's a cheery old card," grunted Harry to Jack
As they slogged up to Arras with rifle and pack.
But he did for them both by his plan of attack.

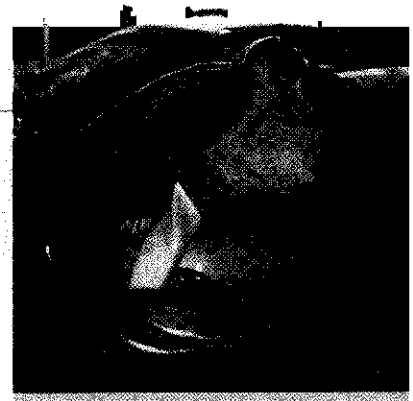
In July 1917, Sassoon's bitterness led him to issue a public denunciation of Britain's political authorities, one directed more specifically against "the political errors and insincerities for which the fighting men are being sacrificed." The rage was perhaps inevitable: In times of war, the quality of the armed forces is—or is perceived as—a reflection of the worth of their civilian overseers. And after two injuries and two medals for bravery, Sassoon was entitled to denounce a war whose objectives, he felt, had been distorted.

Eliot A. Cohen, a professor at the Paul H. Nitze School of Advanced International Affairs in Washington, D.C., and member of the Defense Advisory Board, might well understand. He argues in his latest book, *Supreme Command*, what might seem an obvious point: that during wars civilian leaders have a right, even a duty, to intervene in military affairs. This is opposed to what Cohen calls the "normal theory of civilian-military relations," which, he underlines, pervades thinking on military affairs today. That theory holds that politicians define grand policy in wars, but that it is up to the military to implement policy without civilian interference.

Cohen writes that "political leaders must immerse themselves in the conduct of their wars no less than in their great projects of domestic legislation....They must demand and expect from their military subordinates a candor as bruising as it is necessary....Both groups must expect a running conversation in which, although civilian opinion will not usually dictate, it must dominate....That conversation will cover not only ends and policies, but ways and means."

Cohen then devotes most of his book to laudatory profiles of four statesmen who took an active role in the particulars of war and thus brought about victory: Georges Clemenceau, Abraham Lincoln, Winston Churchill, and David Ben-Gurion. Cohen admits that this "great man" approach might open him up to accusations of hero worship. But when he quotes Henry Kissinger (who doubtless was speaking in the first person) saying, "Great men are so rare that they take some getting used to," Cohen unintentionally raises a serious question about his own thesis. If great men are so rare, then how relevant are their performances to defending the principle of civilian control in military affairs? How do their lessons apply to the bevy of less extraordinary leaders, if not downright mediocrities, who generally govern?

Cohen is right that sensible societies shouldn't trust generals to navigate the myriad curvatures of war without civilian oversight. But since he provides no absolute canon to guide ordinary leaders (nor can such a canon really exist), his argument in favor of civilian domi-



Lust-See TV

Small-screen sex and its discontents

Nick Gillespie

In an age of space shuttle catastrophes, Middle Eastern war, apocalyptic terrorism, and—perhaps most on point—declining rates of teen sex, the continuing interest in the quantity and quality of "lust-see TV" seems positively quaint, little more than nostalgia for a simpler time when a president's penis and not his war plans could dominate the nightly news.

Yet the Kaiser Family Foundation—one of the few nonprofit research groups that openly signals its imperial ambitions in its name—doggedly keeps at it. The good folks there recently released *Sex on TV 3*, the latest installment of their ongoing study of small-screen sheet slapping.

Kaiser's selfless dedication to the cause of counting televised sex acts is significant because it underscores a continuing confusion over the role and influence of popular culture, especially television. The ongoing study exemplifies the mistaken notion that such fare is a major influence on individual behavior and hence in »

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nance can easily backfire when politicians fail to grasp their limitations. Cohen effectively leaves his readers with one of two approaches when assessing the wartime legacy of civilian leaders. Readers can either assume that the outcome of a war justified the means used or argue, as Tolstoy did in *War and Peace*, that since war is a game of infinite variables, leaders are mere cogs in an unfathomable machine. The utilitarian argument is hopelessly biased in favor of the victors; the Tolstoyan outlook explains why strict guidelines of behavior are impossible.

Nor does one get much illumination in a chapter titled "Leadership Without Genius." Cohen uses the sorry outcome in Vietnam to conclude that the Johnson administration's management of that war was an example of how civilian leadership *shouldn't* have acted. He concludes that the problem in Vietnam was not that the civilians tied the military down—a spurious indictment resurrected by conservatives to rationalize America's defeat—but that they didn't tie the military down enough to provide the bewildered armed forces with a clear sense of direction and priorities.

This assessment raises a question: If leaders err when failing adequately to counterbalance their military establishments, might not an uninspired leader's excessive prying also bring a military venture to disaster? It is not just the manner of overseeing war that a leader must consider but also the tactical excellence of his oversight. Despite brief involvement in the Blackhawk War, Lincoln wasn't a military man. But he intuitively grasped that the Union's priority was the destruction of the Confederate army, not the capture of Richmond. In contrast, Hitler's rerouting of two Panzer groups around Moscow in July 1941 delayed a German attack against the Soviet capital, allowing the Red Army to regroup. Cohen provides no overarching rule allowing us to say why Lincoln was right and Hitler wrong, except that one won and the other lost his war.

A civilian leadership that oversees military matters faces another dilemma: how to prevent military officers, in their turn, from playing politics. The innumerable leaks from the Pentagon in the current run-up to war in Iraq made it plain that soldiers were on a policy-shaping rampage. Though their judgment on the desirability of war may have been useful, it was also a flagrant violation of civilian authority to make it public. Still, leaks work: The armed forces are now reportedly preparing for a classic large-scale campaign in Iraq, suggesting they overcame the inclination of Defense Department civilians toward a smaller operation.

> The successful civilian wartime leader is the one who has a clear sense of his political objectives. With Bush, the only certainty is his yearning to fight.

Admittedly, it is not easy in a democracy to shut the armed forces up. In open societies the onset of warfare demands a public debate, making it unreasonable to tell the one institution most concerned to keep its peace. But even the armed forces don't necessarily think monolithically when it comes to these issues. For example, when the Clinton administration contemplated intervening in Kosovo in 1999, the NATO commander, Wesley Clark, irritated his more reluctant Pentagon bosses by taking his case for war directly to administration officials. The top brass didn't care for Clark's politicking and later effectively ended his career. That was hypocrisy. Clark's mistake was not in playing politics but in doing so—and winning—against his own tribe.

In portraying his four paragons, Cohen mainly sticks to detailing events in the leaders' wartime careers that prove his hypothesis. He insists his purpose is not to defend his subjects, but he sets boundaries to the debate in such a way that their reputations are rarely tarnished. Few deny, for example, that Lincoln was a great man, but is it realistic when using him as a model for civilian authority in wartime to ignore his suspension of habeas corpus and imposition of martial law? These were military decisions that had a significant political impact. Cohen acknowledges this point but lamely uses Lincoln's abuse of civil liberties as an illustration of his "steel."

Similarly, in looking back on Ben-Gurion, who no doubt was crucial in bringing about Israeli statehood, is it legitimate to disregard his sponsorship of the Dalet Plan of April-May 1948? As the Israeli historian Benny Morris writes in *The Birth of the Palestinian Refugee Problem 1947–1949* (1987), "The essence of the plan was the clearing of hostile and potentially hostile forces out of the interior of the prospective territory of the Jewish State, establishing territorial continuity between the major concentrations of the Jewish population and securing the Jewish State's future borders before, and in anticipation of, the Arab invasion." Morris notes that the

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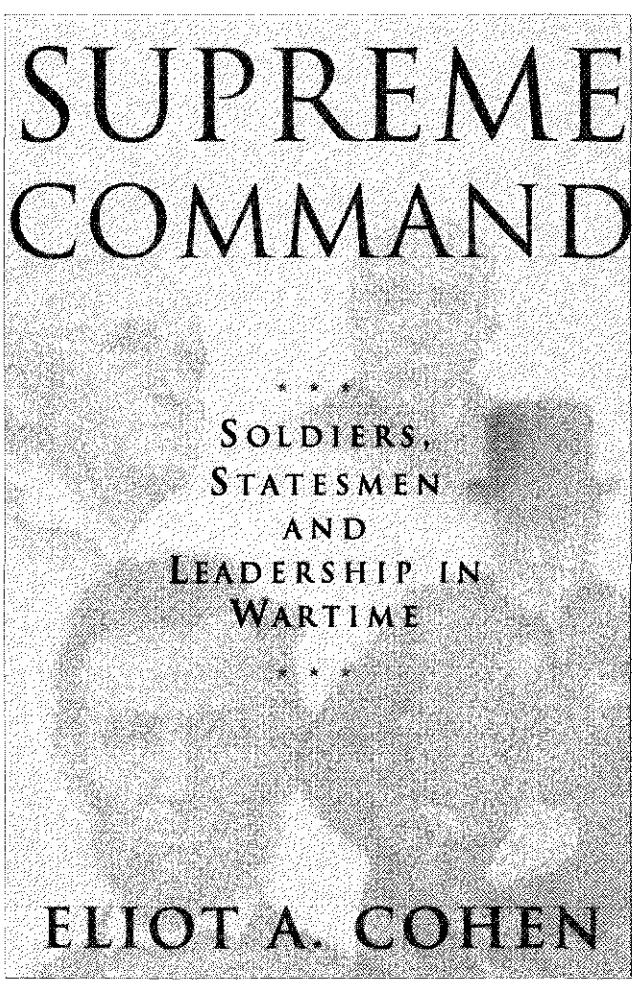
plan justified the expulsion of Palestinian civilians. In judging Ben-Gurion's wisdom, one must ponder whether, by using his army to expel Palestinians from his future state, he ensured decades of bitter Arab antagonism and helped promote the militarization of Israeli society and an expansionist streak that validated the disastrous occupation and settlement of the West Bank and Gaza.

To be fair, Cohen never assumes infallibility in his subjects. But once one evokes the potential for fallibility, an obvious question arises: How will the book's lessons be applied in the martial age of George W. Bush? In a jacket blurb, William Kristol, editor of *The Weekly Standard*, recommends the president read Cohen's book. What the neocons want Bush to learn is that it's up to him and his civilian aides, not the brass hats, to set the pace in the Middle East, particularly Iraq.

Fair enough. But the successful civilian wartime leader is the one who has a clear sense of his political objectives. With Bush, the only certainty is his yearning to fight. It's hard to tell what the administration's long-term aims in Iraq might be. Indeed, it is apparent that a possible Iraq war is different things to different officials. Some see it solely as a means of getting rid of Saddam, while others ponder reshaping the entire Middle East. Bush has united his advisers through his vagueness, while also allowing them diverse readings of what should come next in the Gulf, ignoring his own role as the paramount unifier of purpose.

Cohen probably would not accept this abdication as an example of suitable leadership. Bush, in his inability to define persuasive and coherent aims in Iraq for the American public and, perhaps more important, for his own armed forces (who are preparing to elect Tommy Franks as a successor to Saddam), has failed to do what even leaders without genius must.

One is reminded of Ravi Shankar's retort at the 1971 Concert for Bangladesh when the public applauded what they thought was a sitar improvisation: "Thank you. If you appreciate the tuning so much, I hope you'll enjoy the playing more." Many are applauding Bush's tuning, confusing it with the performance. Yet nothing indicates he really knows the tune in Iraq.



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need of regulation or reform, especially if we're talking about its effects on that most picked-over constituency in contemporary political discourse, "the kids."

The *Sex on TV* series is best understood as a *Girls Gone Wild* franchise for the anxious-parent set, its high moral purpose masking its titillating content. Every two years since 1999, Kaiser, in collaboration with researchers at the University of California–Santa Barbara, pays students to interrupt their own *Harrad Experiment* by the sea for the good of mankind.

The students log the number and nature of sex acts on over 1,000 shows appearing on 10 networks during a regular television season. (We await the inevitable study on the effects of coding TV shows on *student* sexual behavior.) Then comes the well-publicized report, which inevitably includes some bad news, some good news, and a self-aggrandizing claim of relevance and impact.

Here's the "bad" news this time around: Among teenagers' 20 favorite shows, 83 percent included sexual content, 49 percent included sexual behavior, and 20 percent included depictions or discussion of intercourse. Across all TV shows, 64 percent had some sexual content. The "good" news is that among teens' favorite shows, 45 percent of the episodes that either discussed or depicted intercourse made some mention of "safe sex" practices. And while 14 »

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Hell Hounds

How a musical moral panic destroyed three young men

Damon W. Root

Devil's Knot: The True Story of the West Memphis Three, by Mara Leveritt, New York: Atria Books, 417 pages, $24

ON THE AFTERNOON of May 6, 1993, the dead bodies of three 8-year-old boys were discovered less than half a mile from their homes in West Memphis, Arkansas. Stevie Branch, Christopher Byers, and Michael Moore were found naked, beaten, bound hand to foot with their shoelaces, and submerged in a water-filled ditch. Christopher Byers had been castrated. Four weeks later, West Memphis police announced the arrests of 18-year-old Damien Echols, 17-year-old Jessie Misskelley Jr., and 16-year-old Jason Baldwin, soon known as the West Memphis Three.

After six hours of questioning without a parent or lawyer present, Misskelley, a special education dropout with a history of behavior problems and an IQ of 72, implicated himself, Baldwin, and Echols during a rambling, factually impossible "confession" that he subsequently retracted.

"Most of his answers were vague," writes Mara Leveritt in *Devil's Knot: The True Story of the West Memphis Three*, her new book on the case. "Many were contradictory. Almost all began with a prompt by one of the detectives." The next morning, without a shred of physical evidence, the police announced they had their men. Although no one said so at the time, the official theory held the killings to be "satanic" in nature.

Leveritt, a contributing editor to the *Arkansas Times* and 1992's Arkansas Reporter of the Year, had a front row seat. She watched as the three were tried, dubiously linked to the occult, and convicted of murder. During the trial of Damien Echols and Jason Baldwin, the prosecuting attorney actually defined occult activity for the court as, in part, "an obsession with heavy metal music, change in forms of dress, wearing all black. And I believe the proof will show that [Baldwin] had fifteen shirts with the heavy metal thing."

Determined to find out whether "something similar to what happened at Salem had indeed occurred again," Leveritt set out in search of the truth. The result is a horrifying and infuriating look at how moral panics over youth culture can lead to the denial of justice. New ways for the young to entertain and identify themselves constantly arise, and these new ways often lead to prejudiced and absurd overreactions on the part of many authority figures.

For example, after the 1999 shootings at Colorado's Columbine High School, parents, teachers, and politicians fretted over black trench coats, video games, and the songs of Marilyn Manson. In 1992, when 18-year-old Wayne Lo went on a shooting spree at Simon's Rock College while wearing a shirt advertising the hard-core band Sick of It All, the group's aggressive lyrics became a part of the story. Rap star Eminem is regularly criticized—and has been the subject of congressional hearings—for allegedly fomenting homophobia, misogyny, and plain old violence. Congress is now equating electronic music events—"raves"—with depraved crackhouses, and suburban soccer moms are snooping for glow sticks.

The results of such moral panics are frequently just more additions to the history of misguided rhetoric—though we shouldn't underestimate how hard such panics make social life and relationships with parents for kids with the demonized interests. In the case that Leveritt examines in *Devil's Knot*, the panic looks apt to cost at least one innocent youth his life.

Leveritt details a real-life horror show with six young victims: three brutally murdered, two in prison for life, and one, Damien Echols, on death row. She describes an investigation beset with problems and teeming with irregularities. The crime scene offered little physical evidence, including a complete lack of blood, a remarkable fact given the brutality involved. This scarcity of information, combined with the sensational nature of the murders, gave rise to wild speculation. "With the devil so prominent in news reports, ministers were quoted as experts," Leveritt notes. "Reporting on satanism beat skepticism, hands down."

Satanically speaking, the police actually had significant cause for skepticism. Not only did the crime scene lack blood, but there were no signs of ritual activity: no pentagrams, ceremonial candles, or the like. Although the moon had been full and the boys had been hogtied, the crime did not exactly scream Lucifer. Not until one self-styled occult expert was finished, anyway. County juvenile officer and amateur "cult cop" Jerry Driver conducted a sort of freelance investigation that, in Driver's words, immediately started "to zero in on Damien." Driver lobbied, almost single-handedly, for the occult theory of the crime, and his behind-the-scenes efforts paid off.

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Police also received unorthodox contributions from Vicki Hutcheson and her 8-year-old son, Aaron. Operating with tacit police approval, Hutcheson investigated her neighbor Jessie Misskelley Jr. before he had been charged or implicated in the murders. With Jessie's help, she allegedly arranged a date with Damien Echols, during which she claimed to have attended a witches' gathering, or "esbat."

"If [police detective Donald] Bray instituted any protections for the young mother as she prepared to enter a realm that police suspected might harbor vicious murderers," Leveritt observes, "neither he nor she ever mentioned them." After the trial, Hutcheson conceded she might have been drunk that particular night and taken the "esbat" idea from the police. She consistently denied, however, that her actions were in any way influenced by the $35,000 reward she hoped to receive for bringing the killers to justice.

Hutcheson's young son, Aaron, provided even more help. He claimed he had visited the Robin Hood Hills woods (where the bodies were discovered) with the murdered boys and seen robed men engaged in bizarre activities. Later, Aaron's story evolved into a self-contradicting eyewitness statement that eventually included an admission of his own guilt. "Encouraged to tell and retell his story," Leveritt writes, "he embellished his account from a man with yellow teeth to scenes of orgies in the woods, and finally to lurid visions of buckets of blood." Taken together, the Hutchesons' contributions prompted police to question Jessie Misskelley Jr.

Despite leading questions and repeated prompts from the officers, Misskelley's "confession," which led directly to the arrest of Echols and Baldwin, was wrong regarding almost every significant aspect of the crime. Misskelley claimed the boys were anally raped; the medical examiner found no such evidence. He claimed they were bound with rope (not shoelaces), that only their hands were tied (it was hand to foot), and that one boy could kick his legs "up in the air." Misskelley repeatedly maintained that the killings took place in the morning and that the victims had skipped school (they were there until 2:45 p.m.). "Every detective in the room knew, even if Jessie did

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percent of all shows included sexual intercourse—up from 10 percent in 2001—overall sexual content on TV has remained relatively steady.

And the self-aggrandizing claim to relevance? Study director Vicky Rideout tells *The Cincinnati Enquirer* that *Sex on TV* draws "Hollywood's attention to the impact that sexual content has on young people [and] the opportunity [producers] have to play a positive role."

Well, not quite. What it actually suggests is that Hollywood plays no great role in kids' most important life choices. Just as the best-selling *Portnoy's Complaint* failed to turn liver into anyone's lover, *Dawson's Creek* has not proven to be the small-screen equivalent of Spanish fly.

As the Kaiser TV team—and everyone else in America—will attest, there's no question that over the past decade or so kids have been exposed to far more sexual content than they used to be, whether on the tube, at the movies, in music, or in video games. What's more, everyone will agree that most of this content is presented in a glamorous fashion.

Yet this social reality has not created a generation of sex-crazed adolescents. The percentage of high schoolers who have engaged in sexual intercourse declined from 54 percent in 1991 to 46 percent in 2001. We know this, incidentally, courtesy of another set of researchers at Kaiser, folks who work in the foundation's »

not," Leveritt writes, "that the statement was absurd."

As it turned out, Misskelley knew even less than the confession indicated. After a Christian group presented him with some soul-saving literature, Jessie had a question for his lawyer, Dan Stidham. "There I was, sitting in a jail cell with this confessed Satanic killer," Stidham later said, "and he's asking me who 'Satin' is."

The detectives seemed to ignore alternative avenues of investigation that will seem obvious to readers of Leveritt's book. John Mark Byers, stepfather of the castrated boy, was no stranger to law enforcement. A failed pawnbroker and jeweler, Byers was also a convicted drug dealer and undercover drug informant. As a result, he knew several of the investigating officers personally. In 1987 Byers was convicted of terrorizing his ex-wife after threatening her with a stun gun. City attorney John Fogleman, who successfully prosecuted the West Memphis Three six years later, handled that case. Byers received a light sentence: three years of probation plus child support and gainful employment—conditions he failed to fulfill. In 1992, without explanation, Crittenden County Circuit Judge David Burnett formally expunged Byers' record of this conviction. Burnett would go on to preside over the trial and conviction of Echols, Baldwin, and Misskelley.

Given his violent past and the killer or killers' emphasis on his stepson, John Mark Byers certainly warranted attention. "But if the West Memphis police followed up on this lead," Leveritt writes, "they entered no record of it in the file."

In fact, Byers was never pressed on several key discrepancies concerning the boys' disappearance. According to Christopher's 13-year-old brother, Ryan Clark (Byers adopted only Christopher), Ryan had searched the Robin Hood Hills woods with two friends until close to midnight, then gone home to bed. Byers, however, told police that Ryan joined him in another round of searching after midnight. Furthermore, Byers claimed to have searched the woods alone without a flashlight. Again, the police "did not press for details about the times Byers had been alone in the vicinity of where the bodies were discovered."

The impulse to link young people's music and clothes with dangerous, unnatural forces is not a regional, or even religious, phenomenon.

During an interview that appeared in the 2000 HBO documentary *Revelations: Paradise Lost 2*, Byers chillingly described how the trials brought back memories of his own "torture" as a child. "It was like they were reading off what happened to me," he stated.

Almost three years after her son's murder, Byers' wife, Melissa, also died under suspicious circumstances, a "possible homicide" that remains unsolved. Perhaps the most alarming facts arrayed against John Mark Byers, however, concern a hunting knife he gave the makers of the HBO documentary for Christmas. In December 1993, eight months after the murders, West Memphis police searched the Byers and Moore homes, an extremely unusual move with three suspects already set for trial. Conveniently, Byers presented his gift just one day before the search.

The knife, which matched police descriptions of the murder weapon, contained blood consistent with that of both the slain boy and his stepfather. Byers' statements only compounded this mystery. Although he originally told police the knife "had not been used at all," Byers later testified that he had, probably, cut his finger on it.

In November 2000, Dan Stidham, Jessie Misskelley's lawyer, filed a motion with Judge Burnett requesting new DNA tests of several items, including Byers' bloody knife. "Additional testing with new, more sensitive, and more discriminating tests," Stidham wrote, "may help resolve previously inconclusive test results." To date, Stidham has received no response.

Ultimately, black clothes, heavy metal music, and weird beliefs outweighed improper procedures, false testimony, and reasonable doubt. "I have personally observed people wearing black fingernails, having their hair painted black, wearing black T-shirts, black dungarees," testified Dale Griffis, the prosecution's "occult expert." Although the defense argued that Griffis' mail-order Ph.D. from "Columbia Pacific University" did not qualify him as an expert, Burnett disagreed. The prosecution also introduced the cover of Metallica's *Master of Puppets* album, the fact that Echols practiced Wicca and enjoyed books by Stephen King and Anne Rice, and testimony "that eleven black T-shirts had been found in Jason's home."

The prosecutors' linkage of rock with Satanism and murder has deep roots. Rock, like its predecessor the blues, has in many ways cultivated an

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evil reputation. Blues legend Robert Johnson, whose songs include "Hellhound on My Trail" and "Me and the Devil Blues," is said to have sold his soul for musical skills. The Beatles placed occult icon Aleister Crowley on the cover of their seminal album *Sgt. Pepper's Lonely Hearts Club Band*. The Rolling Stones solidified their bad boy image with the 1968 hit "Sympathy for the Devil." There's a huge catalog of more explicitly Satanic classics, such as Slayer's "Altar of Sacrifice," Morbid Angel's "Fall From Grace," Iron Maiden's "The Number of the Beast," and Venom's "In League With Satan."

It goes without saying, of course, that none of these artists actually wants to murder children or bury the world in brimstone. Rather, they wish to shock and delight audiences with dynamic music and the excitement of transgressive identities.

Yet while Leveritt clearly understands this, she fails in *Devil's Knot* to fully explore the gross misinterpretation of popular music at the heart of the case. Instead, Leveritt also plays to prejudice—against Christians rather than pagans. She is all too willing to write off the police, prosecutors, and their witnesses as deluded by their religious beliefs. "The spiritual landscape was rigorously Christian," she intones, "and rigorously literal." Well, maybe. But the impulse to link young people's music and clothes with dangerous, unnatural forces is not a regional, or even religious, phenomenon. As the predictable responses to Columbine, Wayne Lo, Eminem, and raves show, such confusion is on display everywhere, and not restricted to Christians.

Of course, that such foolish, simplistic connections between music and criminality are readily drawn everywhere provides zero comfort to Echols, Baldwin, and Misskelley. But their plight has at least not gone unnoticed. In 1996 HBO broadcast the documentary *Paradise Lost: The Child Murders at Robin Hood Woods*. Featuring music from Metallica and using trial footage, TV clips, and interviews, the film convinced many that the West Memphis Three were the victims of a modern day witch hunt. Roger Ebert declared, "Everybody in the town and in the courtroom and on the jury are all blinded by their fantasies about Satanic cults." *The New York Times* called the Emmy-winning film "true crime reporting at its most bitterly revealing." The sequel followed four years later, while benefit albums with musicians including Eddie Vedder, Henry Rollins, and Hank Williams III have also hit record store shelves. Three California residents, inspired by the film, started the Web site www.wm3.org. Visitors can download documents from the trials, find out the latest information, and purchase various products with the slogan "Free the West Memphis Three."

Yet as Edward Mallett, the attorney now handling Damien Echols' appeal, told *The Atlanta Journal-Constitution* last year, "I don't think judges are favorably affected by young people's groups and Web sites." Indeed, except for the efforts of their attorneys, there may be little more anybody can do for the West Memphis Three. Several appeals are pending, including motions to retest evidence and secure a new judge, and family members are accepting donations for a legal defense fund. Otherwise, the wheels of justice are grinding exceedingly slowly.

Leveritt is ultimately convinced that Salem did in fact repeat itself. Most readers will be as well. *Devil's Knot* is a powerful cautionary tale about the awesome and frequently careless power of law enforcement and the damage it can do when informed by ignorant moral panics and unchecked by rational individuals. ▮

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suggestively named "Reproductive and Sexual Health" program. Similarly out-of-sync trends also hold for violent TV and youth crime: As the former has increased, the latter has declined.

Myths die hard, though, and the idea that popular culture is didactic in any simple sense of the word is one of those myths. So is the related belief that we can direct behavior via culture, a delusion that comforts wartywarts and flatters creators. For an example of the latter, consider the case of Garry Marshall, creator of *Happy Days*. He's famous for claiming that requests for library cards zoomed a whopping 500 percent after an episode in which Fonzie used one.

While it's unlikely that the Fonz had that effect, he does provide the proper response to claims about TV's power over audiences' minds, whether hilariously overblown like Marshall's or soberly documented like *Sex on TV*'s: "Sit on it." ▮

Nick Gillespie (gillespie@reason.com) is **reason***'s editor-in-chief.*

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Wicked Woman Warning

How old vices come back to haunt us

Charles Paul Freund

THIS IS AN old *Life* magazine photo, snapped in 1946 by photographer A.L. "Whitey" Schafer. It's worth a close review. There's a dead cop in the picture, and standing over his body, a gun in her right hand, is a dissipated blond in a black lace nightgown that's slipping off her shoulder and revealing her cleavage.

The blond's got a reefer in her mouth and an empty glass in her left hand. The glass may well have had liquor in it; one can make out a liquor bottle on the table in the shadowy background. The woman even has her foot propped on the cop's back, as if she were a hunter and he the downed game; you can see the inner length of her leg.

What happened here? Some person must have fled the scene before the photo was taken, because on the table with the liquor bottle is a scattered deck of cards. Maybe the cop came into this room alone, unaware of what he would find. Maybe what he encountered was this woman and another person who was even more heavily armed than she is. One can see that a Tommy gun has been left behind, leaning against the now-dead policeman.

How did Schafer, the photographer, manage to get such a dramatic picture? Easy: He set it up. It's a fake. But Schafer never intended to deceive anyone with his image; the point was to instruct. What was the lesson? Forbidden imagery. Schafer's picture illustrates 10 movie images that, according to the period's Hollywood Production Code, you just couldn't show unless the Code's enforcers cut you a break.

When they ran the shot, *Life*'s editors added a helpful inset enumerating these forbidden images, topped by the injunction, "Thou Shalt Not." You couldn't show the Law Defeated. The inside of a woman's thigh was prohibited, as was her Exposed Bosom. Lace Lingerie was out. So were corpses. Narcotics use was not allowed, nor was guzzling booze, nor gambling. Tommy guns were on the list, as was the act of pointing a gun. (Of course, some of these images do crop up in Code-era movies, but only because the moral enforcers chose to look the other way.)

For years, this was a handy picture of "official" moral turpitude, as defined by the Code. By the time the Code was abandoned in the 1960s, the picture had changed; it had come to illustrate moral idiocy instead. By then, the picture invited its viewers to ask what sort of cretins would impose such a stupid standard of forbidden imagery and what kind of moral cowardice would acquiesce in such preposterous prohibitions.

But now this picture has changed again. It no longer illustrates a laughable and morally obtuse past; it now illustrates the morally obtuse present. Certain images are once again regarded as *dangerous*—not merely offensive, but morally harmful if represented as normative. There are again images that are unacceptable to the moral enforcers among us, and if such images already exist they must be changed.

In brief, the old Code's list is being updated and reconstituted; Schafer's tableau of immorality is coming back to life, one moral crime at a time. It is an age of galloping therapeutic censorship.

The two major objects of contemporary therapeutic censorship involve guns and tobacco. In January, for example, the BBC reported that "United States poster companies have airbrushed the classic Beatles *Abbey Road* album cover to remove a cigarette from Paul McCartney's hand." If the BBC's report is accurate, these poster companies didn't ask permission to change the image; they simply altered it, apparently conforming to the zero-tolerance-for-smoking standard set by the United States Postal Service. There's actually a movement to halt all smoking in Hollywood films, and at least one director (Rob Reiner) has taken the no smoking pledge.

The issue of media violence remains an ongoing refrain, too, and Steven Spielberg has gone so far as to remove firearms digitally from scenes in the re-released version of *ET*. But there are plenty more "dangerous" images available for a modern version of the *Life* picture.

If Schafer were going to take his photo today, what would he put in it? He'd keep the gun, turn the reefer into a Marlboro, and put the dame in an SUV. She'd drink and drive, and let her kid ride without a seat belt while playing a violent video game. The dead cop would be the one who pulled her over, though if she claimed ethnic profiling, she'd have a chance in court, especially if she wore that degrading black lace nightgown on the stand. ■

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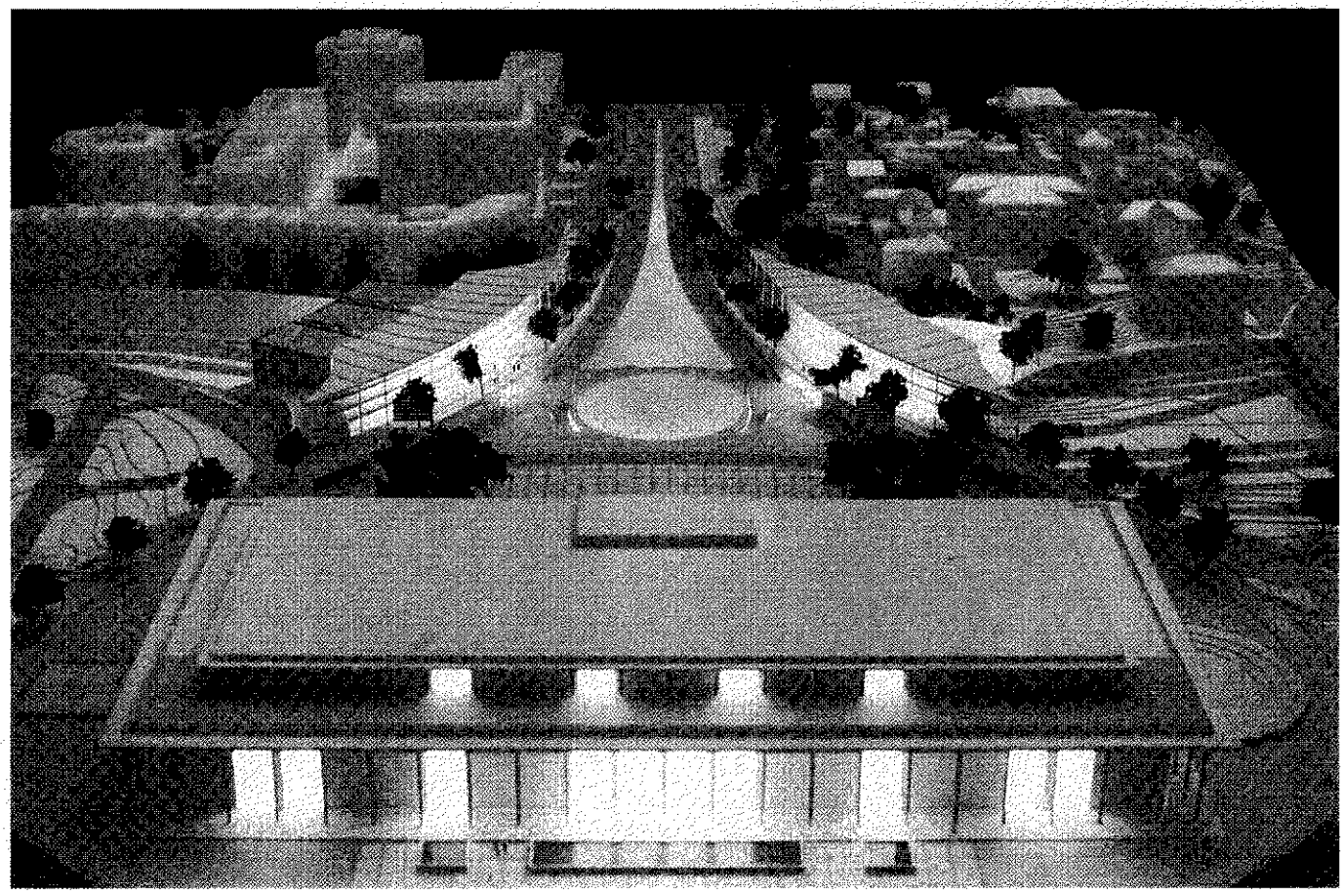

Capitol Culture Complex

Charles Paul Freund

WHAT HAPPENS WHEN you put the wrong building on the wrong site? As this model demonstrates, you can try to fix both the building *and* the site. This plan is the work of architect Rafael Viñoly; Washington, D.C.'s Kennedy Center for the Performing Arts wants to use his vision to expand a notoriously unwelcoming building even while trying to reconceive an atrocious location.

Built in 1971, the KenCen could have been placed in a commercial setting (one possible site was on 14th Street) but was instead isolated at the edge of a tangle of sunken freeways. It's far from anything you want to do. Dinner before the show? A drink later? Go to another neighborhood.

The grand ramp here is intended to cover the moat of freeways, connect the KenCen to Washington, and support rehearsal and other space omitted in Edward Durrell Stone's original design. *The Washington Post* says brightly that "passersby would be able to look through the glass front [of the new buildings] and see dancers, actors and singers going through their paces."

That's nice. All that's wanting is some reason for there to *be* any passersby: There's still no commerce to generate street activity.

What public culture really needs is a good downtown corner. In Washington, it gets ever-expanding ceremonial plazas. ▯

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A Better Way to Protect Endangered Species

Laura E. Huggins is a research fellow at the Hoover Institution.

The fate of many endangered species is in the hands of private property owners. By maintaining habitat for rare species, landholders are providing a public service, and the best way to encourage landholders to protect these species is to ensure that they are compensated rather than penalized for this service.

The Endangered Species Act (ESA), passed by Congress and signed by President Nixon in 1973, established lists of endangered and threatened species and prohibited the killing or harming of them and their habitat.

Measured by any reasonable standard, the ESA has failed. In the past three decades many more species have been added to the list than have been removed. Even if we count all of the species removed from the list as "successes," they account for only 3.5 percent of the species recorded since 1973. According to the General Accounting Office, most species are closer to extinction now than when they were originally listed.

The first step toward reforming the ESA should be to moderate the damage that the current act inflicts on private landowners. Nearly 80 percent of listed species depend on private land for all or part of their habitat requirements. Yet if landholders provide suitable habitat for an endangered species, they run the risk of their property being subject to severe government regulations, many of which constrain land from being used profitably. An unintended consequence of the ESA is that it effectively creates perverse incentives for landowners to destroy species and their habitat—the "shoot, shovel, and shut up" syndrome.

Some environmental leaders recognize the problem. Michael Bean, an Environmental Defense Fund attorney who is often credited with authorship of the ESA, acknowledged that there is "increasing evidence that at least some private landowners are actively managing their land so as to avoid potential endangered species problems." He emphasized that these actions are "not the result of malice toward the environment" but "fairly rational decisions, motivated by a desire to avoid potentially significant economic constraints."

Cases of preemptive habitat destruction have become notorious. For instance, as the golden-cheeked warbler was about to be added to the endangered species list, a firm that owned hundreds of acres of warbler habitat hired workers to chainsaw the entire stand of oak and juniper trees, thus preserving its investment by eliminating the birds' habitat.

For wildlife conservation to be successful, negative restrictions on landowners must be replaced with positive incentives, such as those in Texas's Landowner Incentive Program. Under the tenets of this state-initiated program, landholders voluntarily enter into a contract to perform measurable actions (such as restoring native vegetation or performing controlled burns) with the Texas Parks and Wildlife Department. Biologists are allowed on the property to monitor progress, and landowners are paid on the basis of meeting the contract's objectives. Grants of up to $10,000 are available to property owners who actively manage their land for rare species.

As Aldo Leopold explained nearly seventy years ago, "conservation will ultimately boil down to rewarding the private landowner who conserves the public interest." For more on the importance of protecting private property rights, see *Property Rights: A Practical Guide to Freedom and Prosperity* (Hoover Press 2003).

— Laura E. Huggins

Paid for by the Hoover Institution, Stanford University.

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